



**United States Postal Service  
and  
National Postal Mail Handlers Union**

**C**ontract

**I**nterpretation

**M**anual

**(CIM)**

**Version 4 August 2017**

## Introduction

This Contract Interpretation Manual (CIM), jointly prepared by the National Postal Mail Handlers Union and the United States Postal Service, represents a good faith effort to identify contractual issues on which the National parties are in agreement regarding interpretation and application of the parties' **2016** National Agreement. (There was no updated CIM following the 2011 National Agreement.) The CIM is referenced in the National Agreement between the parties at Article 15, Section .3E, which is reprinted below. (Note that actual language from the National Agreement, Memoranda of Understanding and Letters of Intent is shaded in gray throughout the CIM.)

The parties have agreed to jointly develop and implement a Contract Interpretation Manual (CIM) within six (6) months after the effective date of the 1998 National Agreement. The CIM will set forth the parties' mutual understanding regarding the proper interpretation and/or application of the provisions of this Agreement. It is not intended to add to, modify, or replace, in any respect, the language in the current Agreement; nor is it intended to modify in any way the rights, responsibilities, or benefits of the parties under the Agreement. However, production of the CIM demonstrates the mutual intent of the parties at the National level to encourage their representatives at all levels to reach resolution regarding issues about which the parties are in agreement and to encourage consistency in the application of the terms of the Agreement. For these reasons, the positions of the parties as set forth in the CIM shall be binding on the representatives of both parties in the resolution of disputes at the Local and Regional levels, and in the processing of grievances through Steps 1, 2 and 3 of the grievance-arbitration procedure. In addition, the positions of the parties as set forth in the CIM are binding on the arbitrator, in accordance with the provisions of Article 15.4A6, in any Regional level arbitration case in which the CIM is introduced. The CIM will be updated periodically to reflect any modifications to the parties' positions which may result from National level arbitration awards, Step 4 decisions, or other sources. The parties' representatives are encouraged to utilize the most recent version of the CIM at all times.

The parties agree that the CIM will be made available to their representatives who are responsible for handling disputes at the Local and Area/Regional levels and for processing grievances at Steps 1, 2 and 3 of the grievance-arbitration procedure in an effort to reach resolution regarding issues about which the parties are in agreement and to assure consistency and compliance with the terms of the National Agreement. The parties' agreement in this regard is designed to facilitate the resolution of grievances and to reduce grievance backlogs. Contract interpretations set forth in the CIM may be cited and, if cited, shall be applied to all pending and future cases at Steps 1, 2 and 3 of the grievance procedure, and in Regional arbitration; this includes cases initiated

prior to the issuance of the CIM to the extent that the specific contractual or handbook/manual language interpreted in the CIM was in effect at the time the case was initiated and has not subsequently been changed.

## **Preface**

The interpretations contained in the CIM should be self-explanatory. As specified in Article 15, Section .3E of the National Agreement, the CIM is not intended to “add to, modify, or replace, in any respect” the language in the National Agreement. Additionally, the CIM is not intended to “modify in any way the rights, responsibilities, or benefits or the parties under the Agreement.”

The positions of the parties contained in the CIM are binding on their representatives in the resolution of disputes at the Local and Area/Regional levels and in the processing of grievances at Steps 1, 2 and 3. The positions of the parties contained in the CIM are binding on the arbitrator in any Regional level arbitration case, regular or expedited, in which the CIM is introduced. If introduced in Regional level arbitration, the CIM will speak for itself and the parties’ advocates will not seek testimony on the content of the document from the National parties.

The parties at the National level have committed to update the CIM periodically to reflect any modifications to their positions which may result from national arbitration awards, pre-arbitration settlements, Step 4 decisions, or other agreed upon sources. The parties at the Local and Area/Regional levels should assure that they are working with the most recent version of the CIM at all times and that they apply any revisions or modifications prospectively from the date of revision.

## PREAMBLE

This Agreement (referred to as the **2016** “Mail Handlers National Agreement”) is entered into by and between the United States Postal Service (the “Employer”) and the National Postal Mail Handlers Union, a Division of the Laborers’ International Union of North America, AFL-CIO (the “Union”).

The **2016** Mail Handlers National Agreement became effective, **except as set forth in particular contract provisions or as noted in the CIM explanation of Article 39.2, on March 4, 2017.**

## ARTICLE 1 UNION RECOGNITION

### Section 1.1 Recognition

The Employer recognizes the Union designated below as the exclusive bargaining representative of all employees in the bargaining unit for which the Union has been recognized and certified at the national level:

National Postal Mail Handlers Union, a Division of the Laborers' International Union of North America, AFL-CIO.

The NPMHU is the exclusive bargaining agent representing mail handlers **and mail handler assistants** employed by the U.S. Postal Service. It has been so recognized in accordance with the terms of the Postal Reorganization Act (PRA) of 1970, which transformed the federal government agency known as the "Post Office Department" into an independent establishment of the Government of the United States, the "United States Postal Service." The PRA also granted bargaining-unit employees the right to bargain collectively with respect to "rates of pay, wages, hours of employment, or other conditions of employment."

As the exclusive bargaining representative for all mail handlers, the NPMHU is the only organization that is entitled to represent mail handlers in their collective bargaining relationship with the Postal Service.

The other unions exclusively representing large, national groups of USPS craft employees are:

APWU or American Postal Workers Union, AFL-CIO: clerks, maintenance, motor vehicle, mail equipment shops and material distribution center employees;

NALC or National Association of Letter Carriers, AFL-CIO: city letter carriers; and

NRLCA or National Rural Letter Carriers Association: rural letter carriers.

The NPMHU and the unions representing other postal crafts all negotiated together and executed joint National Agreements with the U.S. Postal Service covering the periods 1971-73 and 1973-75. The NRLCA bargained separately for its 1975-78 Agreement and all agreements thereafter. The NPMHU remained in a jointly-bargained National Agreement with the APWU and NALC covering the periods 1975-78 and 1978-81. Beginning in 1981, and continuing to this day, the NPMHU has bargained separately for its own National Agreement. The APWU and NALC continued to bargain together as the Joint Bargaining Committee in 1981, 1984, 1987, and 1990, but have bargained separately since 1994. Presently, therefore, the four major postal unions have separate National Agreements with the Postal Service.

## **Section 1.2 Exclusions**

The bargaining unit set forth in Section 1 above does not include, and this Agreement does not apply to:

- A Managerial and supervisory personnel;
- B Professional employees;
- C Employees engaged in personnel work in other than a purely non-confidential clerical capacity;
- D Security guards as defined in Public Law 91-375, 1201(2);
- E All Postal Inspection Service employees;
- F Employees in the supplemental work force as defined in Article 7;
- G Rural Letter Carriers;
- H City Letter Carriers;
- I Maintenance Employees;
- J Special Delivery Messengers;
- K Motor Vehicle Employees;
- L Postal Clerks;
- M Mail Equipment Shop employees; or
- N Mail Transport Equipment Centers and Supply Center employees.

This provision sets forth various postal employees who are excluded from or are not part of the bargaining unit represented by the NPMHU.

The supplemental work force, as defined in Article 7 (Section 7.1B), is comprised of casual employees, who are excluded from the bargaining unit. Additionally, managerial and supervisory personnel, employees exclusively represented by one of the other postal unions, and postal employees who work at the Mail Transport Equipment Centers are among those excluded from the bargaining unit.

**Question:** Can a mail handler casual employee or another casual employee who performs mail handler work file a grievance?

**Answer:** No. The bargaining unit for the National Postal Mail Handlers Union does not include the supplemental workforce (casuals).

**Question:** Are managers or supervisors members of the bargaining unit represented by the NPMHU?

**Answer:** No. However, mail handlers serving in a temporary supervisory position (204b) or in a supervisory training program are still considered to be craft employees and may continue to accrue seniority in the mail handler craft. The right of such employees and those detailed to EAS positions to bid on vacant duty assignments or to encumber their current duty assignment is governed by Article 12 (Section 12.3B12).

**Question:** Are postal employees still working at the Mail Transport Equipment Centers or Repair Centers (MTEC) represented by the NPMHU?

**Answer:** Yes. However, they are considered to be members of a separate bargaining unit, and therefore are not directly covered by the **2016** National Agreement between the NPMHU and the Postal Service. Rather, pursuant to the Memorandum of Understanding Mail Transport Equipment Centers/Repair Centers (MOU) that is contained in the 1998 National Agreement, the terms and conditions of employment for employees at the MTECs are governed by the Supplemental Agreement covering the MTECs (as specifically modified by the MOU) until all such postal facilities are closed and all employees are reassigned in accordance with the Memorandum of Understanding regarding reassignment from MTEC facilities.

### **Section 1.3 Facility Exclusions**

This Agreement does not apply to employees who work in other employer facilities which are not engaged in customer services and mail processing, previously understood and expressed by the parties to mean mail processing and delivery, including but not limited to Headquarters, Area Offices, Postal Data Centers, Postal Service Training and Development Institute, Oklahoma Postal Training Operations, Postal Academies, Postal Academy Training Institute, Stamped Envelope Agency, Supply Centers, Mail Equipment Shops, or Mail Transport Equipment Centers and Repair Centers.

### **Section 1.4 Definition**

Subject to the foregoing sections, this Agreement shall be applicable to all employees in the regular work force of the U.S. Postal Service, as defined in

Article 7, at all present and subsequently acquired installations, facilities, and operations of the Employer, wherever located.

This section provides that, subject to the exclusions listed in Sections 1.2 and 1.3, all members of the regular workforce as defined in Article 7 (Section 7.1A), including all full-time regular employees, part-time regular employees, part-time flexible employees, **and mail handler assistants** (MHAs) are members of the bargaining unit represented by the NPMHU. This includes postal employees at all present and subsequently acquired installations, facilities and operations of the Postal Service, wherever located.

### **Section 1.5 New Positions**

- A Each newly created position shall be assigned by the Employer to the national craft unit most appropriate for such position within thirty (30) days after its creation. Before such assignment of each new position the Employer shall consult with the Union for the purpose of assigning the new position to the national craft unit most appropriate for such position. The following criteria shall be used in making this determination:
  - A1 existing work assignment practices;
  - A2 manpower costs;
  - A3 avoidance of duplication of effort and “make work” assignments;
  - A4 effective utilization of manpower, including the Postal Service’s need to assign employees across craft lines on a temporary basis;
  - A5 the integral nature of all duties which comprise a normal duty assignment;
  - A6 the contractual and legal obligations and requirements of the parties.
- B The Union shall be notified promptly by the Employer regarding assignments made under this provision. Should the Union dispute the assignment of the new position within thirty (30) days from the date the Union has received notification of the assignment of the position, the dispute shall be subject to the provisions of the grievance and arbitration procedure provided for herein.

This section requires that before assigning a new position to the most appropriate national craft bargaining unit, the Postal Service shall consult with the NPMHU. Additionally, it contains standards that shall be used in assigning new positions to the appropriate unit and provides that the NPMHU will be

promptly notified of the decision as to which bargaining unit a new position has been assigned. Any dispute regarding the assignment is grievable at the national level within 30 days from the date the union receives notification of the assignment.

In the Letter of Intent Re References to Union, Craft or Bargaining Unit, which is reprinted in the CIM after Article 39, the parties have agreed that the Postal Service will continue to inform the NPMHU of all new positions whether or not the positions are within the craft unit represented by the NPMHU.

### **Section 1.6 Performance of Bargaining Unit Work**

A Supervisors are prohibited from performing bargaining unit work at post offices with 100 or more bargaining unit employees, except:

A1 in an “emergency” which is defined to mean an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature;

A2 for the purpose of training or instruction of employees;

A3 to assure the proper operation of equipment;

A4 to protect the safety of employees; or

A5 to protect the property of the USPS.

B In offices with less than 100 bargaining unit employees, supervisors are prohibited from performing bargaining unit work except as enumerated in Section 1.6A1 through 1.6A5 above or when the duties are included in the supervisor’s position description.

**(The preceding Article, Article 1, shall apply to Mail Handler Assistant employees.)**

[See Memo, page 130]

Section 1.6A prohibits supervisors in offices with 100 or more bargaining unit employees from performing mail handler bargaining unit work, except for the reasons specifically enumerated. Section 1.6B provides that in offices with fewer than 100 bargaining unit employees, supervisors are prohibited from performing bargaining unit work, except for the reasons specifically enumerated in Section 1.6A or when the duties are included in the supervisors’ position description.

**Question:** Can an employee on a 204-b assignment perform bargaining unit work?

**Answer:** No. An employee serving as a temporary supervisor (204-b) is prohibited from performing bargaining unit work except to the extent otherwise provided in Section 1.6 and in the Memorandum of Understanding Re: Overtime/Acting Supervisor (204B) Detailed EAS Position discussed under Article 8.

**Question:** What is the definition of “post office” for purposes of Article 1, Section 1.6?

**Answer:** The provisions of Section 1.6A as they relate to the proper definition of “post office” were arbitrated at the national level in case number AB-NAT-1009. In his award, Arbitrator Gamser rejected the Postal Service’s position that there are stations and branches which act or function just like post offices. Arbitrator Gamser’s award sustaining the grievance quoted a postal witness in a NLRB proceeding as follows:

“Post Office or postal installation is a mail processing and delivery activity under the head of a single manager. That could range from a single small Post Office to a large Post Office with several associated stations and branches which are responsible to the single manager or could include a large Post Office with many stations and branches, even over 100 stations and branches including related activities such as vehicles and motor facility or an air mail facility, all of which are part of that single postal installation.”

Further, Arbitrator Gamser accepted the definition of an installation as defined in Article 38 of the 1973 National Agreement.

“...Installation. A main post office, airport mail facility, terminal or any similar organizational unit under the direction of one postal official, together with stations, branches and other subordinate units.” (Emphasis supplied)

Source: National Arbitration Award AB-NAT-1009, Arbitrator H. Gamser, dated June 8, 1974.

**Question:** How is it determined whether an office has 100 or more bargaining unit employees?

**Answer:** At the beginning of each Agreement period, a count is made of all employees represented by the APWU, NALC and NPMHU to determine which offices have 100 or more employees. The resultant list – which adds together employees in all three of these bargaining units – is effective for the life of the Agreement and does not change during the Agreement.

**Question:** How is “emergency” defined for purposes of this Section?

**Answer:** The definition of emergency found in Article 3 (Section 3.6) is used in this Section: “an unforeseen circumstance of a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.” Normally, an increase in mail volume is not, in and of itself, an emergency situation.

## MEMORANDUM OF UNDERSTANDING

### SUPERVISORS PERFORMING BARGAINING UNIT WORK

It is agreed between the U.S. Postal Service and the National Postal Mail Handlers Union, a Division of LIUNA, AFL-CIO, that where additional work hours would have been assigned to employees but for a violation of Article 1, Section 1.6.A of the **2016** National Agreement and where such work hours are not de minimis, the employee(s) whom management would have assigned the work shall be paid for the time involved at the applicable rate.

**Question:** What is the remedy when a supervisor performs bargaining unit work in violation of Section 1.6A?

**Answer:** Except where the time involved is de minimis, the employee(s) who would have been assigned the bargaining unit work will be paid at the applicable rate for the additional work hours that would have been assigned to the bargaining unit employee(s) but for the violation.

**Question:** Does a union representative have a basis for filing a grievance when he/she believes that a supervisor is performing bargaining unit work in violation of Section 1.6, where the work in question is properly assigned to another craft?

**Answer:** In keeping with the exclusions outlined in Section 1.2, in those circumstances in which there is no dispute that the work in question is properly assigned to another craft (e.g., the work is properly assigned to the clerk craft under the provisions of RI 399), the union representative would have no basis to file a grievance over the supervisor’s performance of that work.

## ARTICLE 2 NON-DISCRIMINATION AND CIVIL RIGHTS

### Section 2.1 Statement of Principles

The Employer and the Union agree that there shall be no discrimination by the Employer or the Union against employees because of race, color, creed, religion, national origin, sex, age, or marital status. In addition, consistent with the other provisions of this Agreement, there shall be no unlawful discrimination against employees, as prohibited by the Rehabilitation Act of 1973 or the Vietnam Era Veterans Readjustment Act of 1974.

[See Memo, page 130]

This article gives mail handlers the contractual right to object to and remedy alleged discrimination through the filing of a grievance.

In addition, in accordance with federal law and regulations, employees and applicants for employment with the Postal Service have legal recourse to remedy alleged work place discrimination. A mail handler can begin this process by contacting an Equal Employment Opportunity (EEO) Counselor. The matter then can be pursued by filing a formal complaint, having a hearing, appealing to the U.S. Equal Opportunity Commission (EEOC), and ultimately appealing to federal court.

Section 2.1 also provides mail handlers the contractual right to object to and remedy, through the grievance and arbitration procedure set forth in Article 15, alleged violations of the Rehabilitation Act of 1973 and the Vietnam Era Veterans Readjustment Act of 1974. The USPS guidelines concerning reasonable accommodation are contained in Handbook EL-307, *Guidelines on Reasonable Accommodation*.

**Question:** May the Postal Service be required to reasonably accommodate an employee due to religious reasons?

**Answer:** The Postal Service has agreed that accommodations should be attempted for those employees who, because of their religious beliefs, may be prohibited from working or required to attend religious services. Such accommodations must be consistent with the National Agreement. Management is not required to provide accommodations that create an undue hardship on the Postal Service.

Source: Postmaster General policy letter of November 25, 1981.

### Section 2.2 Committee

Non-Discrimination and Civil Rights are proper subjects for discussion at Labor-Management Committee meetings at the national, regional/area and local levels provided in Article 38.

### **Section 2.3 Grievances**

Grievances arising under this Article may be filed at Step 2 of the grievance procedure within fourteen (14) days of when the employee or the Union has first learned or may reasonably have been expected to have learned of the alleged discrimination, unless filed directly at the national level, in which case the provisions of this Agreement for initiating grievances at that level shall apply.

This section provides bargaining unit employees the contractual right to grieve alleged discrimination. Section 2.3 provides that grievances may be filed directly to Step 2 of the grievance procedure.

**Question:** When and where can a grievance under Article 2 be filed?

**Answer:** Grievances arising under Article 2 may be filed at Step 2 of the grievance procedure within fourteen (14) days of when the employee or Union has first learned or may reasonably have been expected to have learned of the alleged discrimination.

### **Section 2.4 Dual Filing**

The Union, at the national and local levels, will take affirmative steps to ensure that bargaining-unit employees are informed that they should not pursue essentially contractual matters simultaneously under the grievance and EEO processes.

The Union, at the national and local levels, will not encourage dual filing of grievances.

**(The preceding Article, Article 2, shall apply to Mail Handler Assistant employees.)**

**Question:** Can an employee file a grievance and EEO complaint simultaneously on the same issue?

**Answer:** Yes. The Union has agreed, however, to take affirmative steps to ensure that bargaining unit employees are informed that they should not pursue essentially contractual matters simultaneously under the grievance and EEO processes. The Union also has agreed, at both the National and Local levels, not to encourage dual filing.

**Question:** If an EEO complaint and a grievance are filed on the same issue, does the settlement of the EEO complaint automatically make the grievance moot?

**Answer:** No. If the grievance has moved past the Step 1 level, then the Union must be signatory to any settlement that would include a waiver of the grievance. Source: Step 4 Grievance H4N-3U-D 2506, dated April 15, 1987.

**Question:** Can an administrative EEO complaint be settled in a manner that is contrary to the provisions of the National Agreement?

**Answer:** No. EEO settlements may not take precedence over the language contained in the collective bargaining agreement.

Source: Step 4 Grievance H1C-3F-C 25743, dated December 6, 1985.

**Question:** Are employees entitled to compensation for time spent outside of normal working hours while testifying in an EEO hearing?

**Answer:** Yes. Witnesses whose presence at the EEO hearing is officially required will be in a duty status during a reasonable period of waiting time prior to their testimony at the hearing and during their actual testimony.

Source: Step 4 Grievance H1N-5G-C 15447, dated October 22, 1987.

## MEMORANDUM OF UNDERSTANDING

### REASONABLE ACCOMMODATION FOR THE DEAF AND HARD OF HEARING MANAGEMENT'S RESPONSIBILITY

Management has an obligation to reasonably accommodate impaired employees and applicants who request assistance in communication with or understanding others in work related situation, such as:

- a. During investigatory interviews which may lead to discipline, discussions with a supervisor on job performance or conduct, or presentation of a grievance.
- b. During some aspects of training, including formal classroom instruction.
- c. During portions of EAP programs and EEO counselings.
- d. In critical elements of the selection process such as during testing and interviews.
- e. During employee orientations and safety talks, CFS and Savings Bond

Kickoff meetings.

- f. During the filing or meetings concerning an employee's OWCP claim.

### **IMPLEMENTATION**

This obligation is met by selecting an appropriate resource from the variety of resources available. In selecting a resource, the following, among others, should be considered, as appropriate.

- The ability of the deaf and hard of hearing employee to understand various methods of communication and the ability of others to understand the deaf and hard of hearing employee.
- The importance of the situation as it relates to work requirements, job rights and benefits
- The availability and cost of the alternative resources under consideration.
- Whether the situation requires confidentiality.

Available resources which should be considered included:

- a. Installation heads are authorized to pay for certified interpreters. Every effort will be made to provide certified interpreters when deemed necessary.
- b. In some states, the Division of Vocational Rehabilitation (DVR) provides interpreters at no charge.
- c. Volunteer interpreters or individuals skilled in signing may be obtained from the work force or from the community.
- d. In some situations, written communications may be appropriate.
- e. Supervisors, training specialists, EAP, and EEO counselors may be trained in sign language.
- f. Deaf and hard of hearing applicants should normally be scheduled for a specific examination time when an interpreter will be available.

Management will provide the following assistance for deaf and hard of hearing employees.

- a. All films or videotapes designed for the training or instruction of regular work force employees developed on or after October 1, 1987, shall be opened or closed captioned. To the extent practicable, existing films or videotapes

developed nationally that will continue to be used by the deaf and hard of hearing with some frequency, will be opened or closed captioned.

- b. Special telecommunications devices for the deaf and hard of hearing will be installed in all postal installations employing deaf and hard of hearing employees in the regular work force. These devices will be available to deaf and hard of hearing employees for official business and in the case of personal emergencies. As appropriate, Management will provide training to staff on the use of these special telecommunication devices.
- c. A visual alarm will be installed on all moving powered industrial equipment in all postal installations employing deaf and hard of hearing employees in the regular work force.
- d. Visual fire alarms will be installed in all new postal installations (installations for which the U.S. Postal Service, as of the effective date of this agreement, has not awarded a contract for the design of the building) where the Postal Service installs audible fire alarms. The parties will discuss and seek to agree at the local level about the installation in such other facilities as may be appropriate.

#### **JOINT LABOR-MANAGEMENT MEETINGS**

Discussion of problem area with regard to the use of certified sign interpreters, enhancement of job opportunities for the deaf and hard of hearing, type of special telecommunications devices to be installed, and installation of visual alarms at other than new postal installations are appropriate matters for consideration at Joint Labor-Management meetings. Discussion of such matters at Labor-Management meetings is not a prerequisite to the filing or processing of a grievance.

This MOU establishes specific obligations concerning the Postal Service's duty to reasonably accommodate deaf and hard of hearing employees and applicants under the Rehabilitation Act.

## **ARTICLE 3 MANAGEMENT RIGHTS**

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- 3.1** To direct employees of the Employer in the performance of official duties;
- 3.2** To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
- 3.3** To maintain the efficiency of the operations entrusted to it;
- 3.4** To determine the methods, means, and personnel by which such operations are to be conducted;
- 3.5** To prescribe a uniform dress to be worn by designated employees; and
- 3.6** To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

**(The preceding Article, Article 3, shall apply to Mail Handler Assistant employees.)**

The USPS's "exclusive rights" under this article are basically the same as its statutory rights under the Postal Reorganization Act of 1970, as set forth in 39 U.S.C. § 1001(e). While postal management has the basic power to "manage" the United States Postal Service, Article 3 rights are not absolute. Rather, management must act in accordance with applicable laws, regulations, contract provisions, arbitration awards, letters of intent and memoranda of understanding. Consequently, many of the management rights enumerated in Article 3 are limited by negotiated contract provisions. For example, Management's Article 3 right to "suspend, demote, discharge, or take other disciplinary action against" employees is subject to the provisions of Articles 15 and 16.

Section 3.6 gives management the right to take whatever actions may be necessary to carry out its mission in emergency situations. An emergency is defined as "an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature."

On a related note, Article 30 (Section 30.2, Item B) provides local parties the opportunity during Local Implementation to discuss and formulate “Guidelines for the curtailment or termination of postal operations to conform to orders of local authorities or as local conditions warrant because of emergency conditions.”

**Question:** Do the management rights stated in Article 3 permit management to disregard the other provisions of the National Agreement?

**Answer:** No. Depending upon the circumstances, management’s rights may be limited by other provisions of the National Agreement.

## **ARTICLE 4 TECHNOLOGICAL AND MECHANIZATION CHANGES**

Both parties recognize the need for improvement of mail service.

### **Section 4.1 Advance Notice**

The Union at the national level will be informed as far in advance as practicable, but no less than 30 days in advance, of implementation of technological or mechanization changes which affect jobs including new or changed jobs in the area of wages, hours or working conditions. When major new mechanization or equipment is to be purchased and installed, the Union at the national level will be informed as far in advance as practicable, but no less than 90 days in advance.

### **Section 4.2 Committee**

There shall be established at the national level a Joint Technological and Mechanization Changes Committee composed of an equal number of representatives of management and the union. The Committee shall meet semiannually, or as necessary, from the conceptual stage onward, to discuss any issues concerning proposed technological and mechanization changes which may affect jobs, including new or changed jobs, which affect the wages, hours, or working conditions of the bargaining unit. For example, the Postal Service will keep the Union advised concerning any research and development programs (e.g., study on robotics) which may have an effect on the bargaining unit.

In addition, the Committee shall be informed of any new jobs created by technological or mechanization changes. Where present employees are capable of being trained to perform the new or changed jobs, the Committee will discuss the training opportunities and programs which will be available. These discussions may include the availability of training opportunities for self-development beyond the new or changed jobs.

### **Section 4.3 Resolution of Differences**

Upon receiving notice of the changes, an attempt shall be made at the national level to resolve any questions as to the impact of the proposed change upon affected employees and if such questions are not resolved within a reasonable time after such change or changes are operational, the unresolved questions may be submitted by the Union to arbitration under the grievance-arbitration procedure. Any arbitration arising under this Article will be given priority in scheduling.

Under Section 4.1, the Union at the National level will be informed as far in advance as practicable, but no less than 30 days in advance, of the

implementation of technological or mechanization changes which affect jobs in the area of wages, hours or working conditions. For major new mechanization or equipment that will be purchased or installed, the Union at the National level will be informed no less than 90 days in advance.

Section 4.2 establishes a National-level Joint Technological and Mechanization Changes Committee composed of an equal number of representatives of Management and the Union. The Committee shall meet semi-annually to discuss issues concerning proposed technological and mechanization changes, including any research and development programs, that may have an effect on the NPMHU bargaining unit. The Committee also will discuss available training opportunities and programs when current employees are capable of being trained for the new or changed jobs.

Section 4.3 provides that, upon notice of changes as outlined above, the parties at the National level shall attempt to resolve any questions about the impact of the proposed changes on affected employees. Any unresolved questions may be submitted by the Union to arbitration; any such arbitration will be given priority in scheduling.

The provisions of Sections 4.1, 4.2, and 4.3 are administered and enforced by the parties at the National level. These provisions are not properly the subject of local grievances.

#### **Section 4.4 New Jobs**

Any new job or jobs created by technological or mechanization changes shall be offered to present employees capable of being trained to perform the new or changed job and the Employer will provide such training. During training, the employee will maintain his/her rate. It is understood that the training herein referred to is on the job and not to exceed sixty (60) days. Certain specialized technical jobs may require additional and off-site training.

An employee whose job is eliminated, if any, and who cannot be placed in a job of equal grade shall receive saved grade until such time as that employee fails to bid or apply for a position in the employee's former wage level.

The obligation hereinabove set forth shall not be construed to, in any way, abridge the right of the Employer to make such changes.

Unlike Sections 4.1, 4.2 and 4.3, the contract language found in Section 4.4 is enforceable at the local level. Section 4.4 requires management to offer any new jobs created by technological or mechanization changes to present employees capable of being trained to perform the new or changed job. On the job training for any new job created by technological or mechanization changes shall not exceed 60 days, although certain specialized technical jobs may require

additional, off-site training. During training, the employees will maintain their pay rate.

In addition, Section 4.4 provides that if an employee's job is eliminated due to technological or mechanization changes and if the employee cannot be placed in a job of equal grade, the employee shall receive saved grade until such time as employee fails to bid or apply for a position in employee's former wage level. The saved grade provided for in this section is governed by the provisions of Section 421.53 of the Employee and Labor Relations Manual (ELM).

See also Article 9 (Section 9.7) which contains a general provision requiring the Postal Service to continue the current salary rate protection program for the duration of this agreement. This includes not only the "saved grade" provisions found in Section 4.4 and described in ELM Section 421.53, but also the "protected rate" provisions found in ELM Section 421.51 and the "saved rate" provisions found in ELM Section 421.52. In addition, employees who qualify for "saved grade" will receive "saved grade" for an indefinite period of time subject to the conditions contained in Section 4.4.

#### **Section 4.5 Local Notice**

The installation head or his/her designee shall notify, and upon request meet with, the appropriate local union official, as far in advance as reasonably practicable, concerning the **local** deployment of any new automated or mechanized equipment, **whether locally purchased or nationally deployed**, that will have a significant impact on mail handler duty assignments within the installation.

The language of Section 4.5 deals with new automated or mechanized equipment that is **either** locally purchased **or nationally deployed** and that will have a significant impact on duty assignments. It requires advance notice to the appropriate local union official of the deployment of such equipment. If requested, the installation head or designee will meet with the union to discuss the deployment. While the notice must be made as far in advance as "reasonably practicable," no set time frame has been established.

## **ARTICLE 5 PROHIBITION OF UNILATERAL ACTION**

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

**(The preceding Article, Article 5, shall apply to Mail Handler Assistant employees.)**

Article 5 prohibits management taking any unilateral action inconsistent with the terms of the existing agreement or with its obligations under law. Section 8(d) of the National Labor Relations Act prohibits an employer from making unilateral changes in wages, hours or working conditions during the term of a collective bargaining agreement.

Examples of prohibited actions include:

- Giving employees cash awards that were not negotiated.
- Implementing “pro-active” discipline programs without negotiating them with the union.

Source: National Arbitration Award H1M-NA-C 99, Arbitrator N. Zumas, dated May 11, 1987.

Management actions are not considered to be unilateral when they are covered by the National Agreement or when they are an exercise of rights that the parties have reserved to management as provided in Article 3. For example, management may decide to discontinue an installation and the agreement of the Union is not necessary because that right has been reserved to management in Articles 3 and 12. On the other hand, the reassignment of those employees affected by that decision must be made in accordance with Article 12 and any other applicable provisions of the Agreement. The manner in which such reassignments are made could be subject to a challenge through the grievance procedure as a violation of Article 12 but not necessarily as a violation of Article 5.

Question: What is an example of actions not prohibited under Article 5?

Answer: Changes in mail distribution systems that could potentially result in excessing. The arbitrator found that, under the provisions of Article 3 and Article 12, management could proceed without further collective bargaining.

Source: National Arbitration Award AC-NAT-3052, Arbitrator S. Garrett, dated April 25, 1977.

Question: Can management change breaks?

Response: Issues involving breaks are determined by local policy. Whether management altered a past practice can only be determined by full development of the specific fact circumstances involved.

Source: Step 4 Grievance H1M-5D-C 21062, dated October 15, 1984.

**In 2014, in his award concerning the Lead Clerk position, National Arbitrator Shyam Das wrote:**

**In sum, the NPMHU has established that the Postal Service unilaterally changed the terms and conditions of employment for Mail Handlers when it assigned the Lead Clerk position which it had negotiated with the APWU to provide oversight, direction and support to Mail Handlers, work that in the absence of a supervisor previously had been performed by Mail Handler Group Leaders. The Postal Service is ordered to restore the status quo and to bargain with the NPMHU over these matters.**

**Source: National Arbitration Award Q06M-6Q-C 12288977, Arbitrator S. Das, dated November 5, 2014.**

National Arbitrator Bernstein wrote concerning Article 5:

The only purpose the Article can serve is to incorporate all the Service's "obligations under law" into the Agreement, so as to give the Service's legal obligations the additional status of contractual obligations as well. This incorporation has significance primarily in terms of enforcement mechanism-it enables the signatory unions to utilize the contractual vehicle of arbitration to enforce all of the Service's legal obligations. Moreover, the specific reference to the National Labor Relations Act is persuasive evidence that the parties were especially interested in utilizing the grievance and arbitration procedure spelled out in Article 15 to enforce the Service's NLRB commitments.

Source: National Arbitration Award H1N-5G-C 14964, Arbitrator N. Bernstein, dated March 11, 1987.

## **ARTICLE 6 LAYOFF AND REDUCTION IN FORCE**

### **Section 6.1 General Principles**

A Each employee who is employed in the regular work force as of the date of the Award of Arbitrator James J. Healy, September 15, 1978, shall be protected henceforth against any involuntary layoff or force reduction.

A1 It is the intent of this provision to provide security to each such employee during his or her work lifetime.

A2 Members of the regular work force, as defined in Article 7 of the Agreement, include full-time regulars, part-time employees assigned to regular schedules and part-time employees assigned to flexible schedules.

B Employees who become members of the regular work force after the date of this Award, September 15, 1978, shall be provided the same protection afforded under Section 6.1A1 above on completion of six years of continuous service and having worked in at least 20 pay periods during each of the six years.

C With respect to employees hired into the regular work force after the date of this Award and who have not acquired the protection provided under Section 6.1B above, the Employer shall have the right to effect layoffs for lack of work or for other legitimate reasons. This right may be exercised in lieu of reassigning employees under the provisions of Article 12, except as such right may be modified by agreement. Should the exercise of the employer's right to lay off employees require the application of the provisions of Chapter 35 of Title 5, United States Code, employees covered by that Chapter with less than three years of continuous civilian federal service will be treated as "career conditional" employees.

The Employer's right as established in this section shall be effective July 20, 1979.

The following terms as to the employees' and employer's rights and the rules and procedures to be followed in the implementation of Article 6 are a part of the September 15, 1978 Final Resolution and shall be final and binding upon the parties:

[See Memo, page 132]

### **Section 6.2 Coverage**

A Employees Protected Against Any Involuntary Layoff or Force Reduction

Those employees who occupy full-time, part-time regular or part-time flexible positions in the regular work force (as defined in Article 7) on September 15, 1978, are protected against layoff and reduction in force during any period of employment in the regular work force with the United States Postal Service or successor organization in his or her lifetime. Such employees are referred to as "protected employees."

Other employees achieve protected status under the provisions of Section 6.2C below.

B Employees Subject to Involuntary Layoff or Force Reduction

Except as provided in Sections 6.2A and 6.2C, all employees who enter the regular work force, whether by hire, transfer, demotion, reassignment, reinstatement, and reemployment on or after September 16, 1978, are subject to layoff or force reduction and are referred to as "non-protected employees."

C Non-Protected Employees Achieving Protected Status

C1 A non-protected employee achieves protected status upon completion of six years of continuous service in the regular work force. The service requirement is computed from the first day of the pay period in which the employee enters the regular work force. To receive credit for the year, the employee must work at least one hour or receive a call-in guarantee in lieu of work in at least 20 of the 26 pay periods during that anniversary year. Absence from actual duty for any of the following reasons will be considered as "work" solely for the purposes of this requirement:

C1a To the extent required by law, court leave, time spent in military service covered by Chapter 43 of Title 38, or time spent on continuation of pay, leave without pay or on OWCP rolls because of compensable injury on duty.

C1b Time spent on paid annual leave or sick leave, as provided for in Article 10 of the Agreement.

C1c Leave without pay for performing Union business as provided for in Article 24 of the Agreement.

C1d All other unpaid leave and periods of suspension or time spent in layoff or RIF status will not be considered work. Failure to meet the 20 pay period requirement in any given anniversary year

means the employee must begin a new six year continuous service period to achieve protected status.

- C2 Temporary details outside of the regular work force in which the employee's position of record remains in the regular work force count toward fulfilling the 20 pay periods of work requirement per year.
- C3 If a non-protected employee leaves the regular work force for a position outside the Postal Service and remains there more than 30 calendar days, upon return the employee begins a new service period for purposes of attaining six years continuous service.
- C4 If a non-protected employee leaves the regular work force and returns within two years from a position within the Postal Service the employee will receive credit for previously completed full anniversary years, for purposes of attaining the six years continuous service.

### **Section 6.3 Preconditions for Implementation of Layoff and Reduction in Force**

- A The Union shall be notified at its Regional level no less than 90 days in advance of any layoff or reduction in force that an excess of employees exists or will exist at an installation and that a layoff and reduction in force may be necessary. The Employer will explain to the Union the basis for its conclusion that legitimate business reasons require the excessing and possible separation of employees.
- B No employee shall be reassigned under this Article or laid off or reduced in force unless and until that employee has been notified at least 60 days in advance that he or she may be affected by one or the other of these actions.
- C The maximum number of excess employees within an installation shall be determined by seniority unit within each category of employees (full-time, part-time regular, part-time flexible). This number determined by the Employer will be given to the Union at the time of the 90-day notice.
- D Before implementation of reassignment under this Article or, if necessary, layoff and reduction in force of excess employees within the installation, the Employer will, to the fullest extent possible, separate all casuals within the craft and minimize the amount of overtime work and part-time flexible hours in the positions or group of positions covered by the seniority unit as defined in this Agreement or as agreed to by the parties. In addition, the Employer shall solicit volunteers from among employees in the same craft within the installation to terminate their employment with the Employer. Employees who elect to terminate their employment will receive a lump sum severance payment in the amount provided by Part 435 of the Employee and Labor Relations Manual, will receive benefit coverage to the extent provided by

such Manual, and, if eligible, will be given the early retirement benefits provided by Section 8336(d)(2) of Title 5, United States Code and the regulations implementing that statute.

- E No less than 20 days prior to effecting a layoff, the Employer will post a list of all vacancies in other seniority units and crafts at the same or lower level which exist within the installation and within the commuting area of the losing installation. Employees in an affected seniority unit may, within 10 days after the posting, request a reassignment under this Article to a posted vacancy. Qualified employees will be assigned to such vacancies on the basis of seniority. If a senior non-preference eligible employee within the seniority unit indicates no interest in an available reassignment, then such employee becomes exposed to layoff. A preference eligible employee within the seniority unit shall be required to accept such a reassignment to a vacancy in the same level at the installation, or, if none exists at the installation, to a vacancy in the same level at an installation within the commuting area of the losing installation.

If the reassignment is to a different craft, the employee's seniority in the new craft shall be established in accordance with the applicable seniority provisions of the new craft.

## **Section 6.4 Layoff and Reduction in Force**

### **A Definition**

The term "layoff" as used herein refers to the separation of non-protected, non-preference eligible employees in the regular work force because of lack of work or other legitimate, nondisciplinary reasons. The term "reduction in force" as used herein refers to the separation or reduction in the grade of a non-protected veterans preference eligible in the regular work force because of lack of work or other legitimate non-disciplinary reasons.

### **B Order of Layoff**

If an excess of employees exists at an installation after satisfaction of the preconditions set forth in Section 6.3 above, the Employer may lay off employees within their respective seniority units in inverse order of seniority as defined in the Agreement.

### **C Seniority Units for Purposes of Layoff**

Seniority units within the categories of full-time regular, part-time regular, and part-time flexible, will consist of all non-protected persons at a given level within an established craft at an installation unless the parties agree otherwise. It is the intent to provide the broadest possible unit consistent

with the equities of senior non-protected employees and with the efficient operation of the installation.

#### D Union Representation

Chief stewards and union stewards whose responsibilities bear a direct relationship to the effective and efficient representation of bargaining unit employees shall be placed at the top of the seniority unit roster in the order of their relative craft seniority for the purposes of layoff, reduction in force, and recall.

#### E Reduction in Force

If an excess of employees exists at an installation after satisfaction of the preconditions set forth in Section 6.3 above and after the layoff procedure has been applied, the Employer may implement a reduction in force as defined above. Such reduction will be conducted in accordance with statutory and regulatory requirements that prevail at the time the force reduction is effected. Should applicable law and regulations require that other non-protected, non-preference eligible employees from other seniority units be laid off prior to reduction in force, such employees will be laid off in inverse order of their craft seniority in the seniority unit.

In determining competitive levels and competitive areas applicable in a force reduction, the Employer will submit its proposal to the Union at least 30 days prior to the reduction. The Union will be afforded a full opportunity to make suggested revisions in the proposal. However, the Employer, having the primary responsibility for compliance with the statute and regulations, reserves the right to make the final decision with respect to competitive levels and competitive areas. In making its decision with respect to competitive levels and competitive areas the Employer shall give no greater retention security to preference eligibles than to non-preference eligibles except as may be required by law.

### **Section 6.5 Recall Rights**

- A Employees who are laid off or reduced in force shall be placed on recall lists within their seniority units and shall be entitled to remain on such lists for two years. Such employees shall keep the Employer informed of their current address. Employees on the lists shall be notified in order of craft seniority within the seniority unit of all vacant assignments in the same category and level from which they were laid off or reduced in force. Preference eligibles will be accorded no recall rights greater than non-preference eligibles except as required by law. Notice of vacant assignments shall be given by certified mail, return receipt requested, and a copy of such notice shall be furnished to the local union president. An

employee so notified must acknowledge receipt of the notice and advise the Employer of his or her intentions within 5 days after receipt of the notice. If the employee accepts the position offered he or she must report for work within 2 weeks after receipt of notice. If the employee fails to reply to the notice within 5 days after the notice is received or delivery cannot be accomplished, the Employer shall offer the vacancy to the next employee on the list.

If an employee declines the offer of a vacant assignment in his or her seniority unit or does not have a satisfactory reason for failure to reply to a notice, the employee shall be removed from the recall list.

- B An employee reassigned from a losing installation pursuant to Section 6.3E above and who has retreat rights shall be entitled under this Article to exercise those retreat rights before a vacancy is offered to an employee on the recall list who is junior to the reassigned employee in craft seniority.

### **Section 6.6 Protective Benefits**

- A **Severance Pay**  
Employees who are separated because of a layoff or reduction in force shall be entitled to severance pay in accordance with Part 435 of the Employee and Labor Relations Manual.
- B **Health and Life Insurance Coverage**  
Employees who are separated because of a layoff or a reduction in force shall be entitled to the health insurance and life insurance coverage and to the conversion rights provided for in the Employee and Labor Relations Manual.

### **Section 6.7 Union Representation Rights**

- A The interpretation and application of the provisions of this Article shall be grievable under Article 15. Any such grievance may be introduced at the Regional/Area (i.e., Step 3) level and shall be subject to priority arbitration.
- B The Employer shall provide to the Union a quarterly report on all reassignments, layoff and reductions in force made under this Article.
- C Preference eligibles are not deprived of whatever rights of appeal such employees may have under applicable laws and regulations. However, if an employee exercises these appeal rights, the employee thereby waives access to any procedure under this agreement beyond Step 3 of the grievance-arbitration procedure.

### **Section 6.8 Intent**

The Employer shall not lay off, reduce in force, or take any other action against a non-protected employee solely to prevent the attainment by that employee of protected status.

Article 6 governs layoff and reduction in force. A “layoff” is the separation of non-protected, non-preference eligible employees in the regular work force because of lack of work or other legitimate, non-disciplinary reasons. A “reduction in force” refers to the separation or reduction in the grade of a non-protected, veterans’ preference eligible employee in the regular work force because of lack of work or other legitimate, non-disciplinary reasons.

Article 6 was created in its current form by Arbitrator Healy’s interest arbitration awards that decided the terms of the 1978-1981 National Agreement. His initial award established the basic right of USPS management to lay off employees. The second award set forth the details of the current Article 6.

Source: Interest Arbitration Awards, Arbitrator James J. Healy, dated September 15, 1978, and February 26, 1979.

Section 6.1 provides lifetime protection against layoff or reduction in force for employees who were in the regular work force (i.e., full-time regular, part-time regular, and part-time flexible employees) on September 15, 1978. Employees with lifetime protection against layoff or reduction in force are referred to as “protected employees.” Lifetime protection is not lost by those employees on the rolls on September 15, 1978, who later leave USPS and are rehired after any break in service or who transfer from one office to another or one craft to another.

Employees who enter the regular work force (defined in Article 7 as full-time regular, part-time regular, and part-time flexible employees) on or after September 16, 1978 – whether by hire, transfer, demotion, reassignment, reinstatement, or re-employment – are subject to layoff or reduction in force until they achieve “protected” status under Section 6.2C.

Section 6.2C provides that employees who did not have lifetime protection as of September 15, 1978 achieve protected status upon completion of six (6) years of continuous service in the regular work force. To receive credit, such employees must work at least one (1) hour or receive a call-in guarantee pursuant to Article 8, Section (8.8) in lieu of work in at least 20 of the 26 pay periods during each “anniversary year.” The “anniversary year” begins on the first day of the pay period in which the employee enters the regular work force.

For the purpose of the six-year requirement, absence from work for any of the following reasons is considered to be “work”:

1. To the extent provided by law, court leave, certain time spent in military service covered by Chapter 43 of Title 38, or time spent on continuation of pay (COP), leave without pay (LWOP) or on the OWCP rolls because of compensable injury on duty;
2. Time spent on paid annual leave or sick leave;
3. Time spent on leave without pay (LWOP) for performing Union business as provided for in Article 24 of the Agreement, and
4. Temporary details outside of the regular work force in which the employee's position of record remains in the regular work force.

The parties do not currently agree upon the extent to which time spent on unpaid leave covered by the Family and Medical Leave Act (FMLA) is **required by the FMLA to be** considered "work" for the purpose of this six-year requirement. However, time spent on "union" time is not considered "work" for the purpose of this six-year requirement.

In 1972, a grievance was advanced to Step 4 by the American Postal Workers Union regarding the non-scheduling of some part-time flexible employees at San Francisco, CA beginning in December, 1971. No meeting was held at the national level, but a decision was made to accept the validity of the grievance. Management's decision as to disposition was as follows:

"Though the contract does not specify a minimum amount of scheduled time for part-time flexible employees, in order to meet the intent of Article VI, these employees are to be scheduled for a least four (4) hours per pay period. Consequently, 239 employees will be given 4 hours pay for any period they did not work after December 30, 1971, and must be scheduled for a minimum of 4 hours each pay period in the future."

A copy of the above disposition was sent to all Regional Employee Relations Directors by cover letter dated February 14, 1972. They were instructed that should similar grievances arise in their region, the matter should be handled in this manner.

For clarification, the part-time flexible employees were paid four (4) hours for each pay period in which they were not scheduled to work because the San Francisco, CA Post Office has more than 200 man years of employment. In offices with less than 200 man years of employment, part-time flexible employees are entitled to two (2) hours each pay period. See Article 8 (Section 8.8).

In a 1974 policy letter, Brian J. Gillespie, Director, Office of Programs and Policies provided the following position to Emmet Andrews, President, APWU concerning a guarantee of two (2) or four (4) hours pay for part-time flexible employees who were not scheduled to work any hours during a pay period:

“The Postal Service, in keeping with the intent of Article VI of the National Agreement, has taken the position that part-time flexible employees in offices with 200 or more man years of employment are to be scheduled to work a minimum of four (4) hours each pay period. Part-time flexible employees in those offices with less than 200 man years of employment are to be scheduled to work a minimum of two (2) hours each pay period.

In those instances where the employees in question were not scheduled for duty during a pay period, they would be entitled to receive two or four hours pay whichever is applicable.”

Source: Letter, Brian J. Gillespie, dated December 23, 1974.

Section 6.2C3 provides that, upon return, unprotected employees who leave the Postal Service and are rehired more than 30 calendar days later begin a new service period for purposes of attaining six years continuous service in order to attain protected status. If the employee returns within 30 days, Section 6.2C1 applies.

Section 6.2C4 provides that, if an employee leaves the regular work force and returns within two years from a position within the Postal Service, the employee will receive credit towards the six years of continuous service for the previously completed full anniversary year(s). For example, if an employee had completed five (5) years and six (6) months pursuant to Section 6.2C1 and was promoted to a non-bargaining unit position effective March 9, 1998, but returned to the bargaining unit effective February 6, 1999, the employee would continue credit for the five anniversary years but would lose the six months. The employee's new anniversary date would become February 6, 1994.

Article 6 also provides certain procedural protections. For instance, management may not implement a layoff or reduction in force without at least 90 days notification to the union at the regional level, 60 days notification of layoff to the affected employee, and posting of any available vacancies no less than 20 days prior to layoff. Section 6.7A provides that grievances regarding the interpretation or application of this article may be filed at Step 3 and shall be subject to priority arbitration.

It should be noted that “preference eligible” employees have special rights under the Veterans’ Preference Act regarding separation or reduction in grade. They may have different or greater rights under the law than those set forth in Article 6. Section 6.7C provides that preference eligible employees who exercise legal appeal rights under the Veterans’ Preference Act thereby lose access to the grievance procedure beyond Step 3. Also, see Article 16, (Section 16.9).

## **MEMORANDUM OF UNDERSTANDING**

### **ARTICLE 6 - LAYOFF PROTECTION**

Each employee who is employed in the regular work force as of **May 20, 2016**, and who has not acquired the protection provided under Article 6 shall be protected henceforth against any involuntary layoff or force reduction during the term of this Agreement. It is the intent of this Memorandum of Understanding to provide job security to each such employee during the term of this Agreement; however, in the event Congress repeals or significantly relaxes the Private Express Statutes this Memorandum shall expire upon the enactment of such legislation. In addition, nothing in this Memorandum of Understanding shall diminish the rights of any bargaining-unit employees under Article 6.

Since this Memorandum of Understanding is being entered into on a non-precedential basis, it shall terminate for all purposes at midnight **September 20, 2019**, and may not be cited or used in any subsequent dispute resolution proceedings.

The Memorandum of Understanding, Article 6-Layoff Protection, which is reprinted above, provides layoff protection for the duration of the agreement to all employees in the regular workforce as of **May 20, 2016** who had not otherwise acquired the protection under Article 6. The Memorandum terminates for all purposes at midnight **September 20, 2019**, or at an earlier date in the event Congress repeals or significantly relaxes the Private Express Statutes. Protection otherwise provided under Article 6 is not affected by the termination of this Memorandum.

**In a National Arbitration Award issued on August 1, 2012, Arbitrator S. Goldberg concluded that the Layoff Protection MOU negotiated as part of the 2010 National Agreement between the Postal Service and the American Postal Workers Union does not continue to apply to an employee who is transferred out of the APWU bargaining unit into another bargaining unit, such as the NPMHU bargaining unit. When employees leave a bargaining unit for another, they generally are covered by the contract in effect for the latter unit, not the former.**

**Source: National Arbitration Award Q06C-4Q-C 09250752, Arbitrator S. Goldberg, dated August 1, 2012.**

## **ARTICLE 7 EMPLOYEE CLASSIFICATIONS**

### **Section 7.1 Definition and Use**

#### **A Regular Work Force**

The regular work force shall be comprised of two categories of employees which are as follows:

##### **A1 Full-Time**

Employees in this category shall be hired pursuant to such procedures as the Employer may establish and shall be assigned to regular schedules consisting of five (5) eight (8) hour days in a service week.

##### **A2 Part-Time**

Employees in this category shall be hired pursuant to such procedures as the Employer may establish and shall be assigned to regular schedules of less than forty (40) hours in a service week, or shall be available to work flexible hours as assigned by the Employer during the course of a service week.

Section 7.1A establishes the employee categories within the mail handler craft by identifying and defining employees in the regular work force. The two categories contained in this definition are full-time and part-time; part-time is further divided into part-time regular and part-time flexible.

Full-time employees are guaranteed a regular schedule of five (5) eight (8) hour days in each service week. Service week is defined in Article 8 (Section 8.2A) as a calendar week beginning at 12:01 a.m. Saturday and ending at 12 midnight the following Friday.

Part-time regular employees are assigned to regular schedules of less than forty (40) hours in a service week.

Part-time flexible employees are available to work flexible hours as assigned by management.

#### **B Supplemental Work Force**

1. The Supplemental work force shall be comprised of casual employees. Casual employees in all postal installations may be hired for a term not to exceed 360 calendar days per appointment.

2. During the course of a service week, the Employer will make every effort to insure that qualified and available part-time flexible employees are utilized at the straight time rate prior to assigning such work to casuals. The number of casuals who may be employed in any accounting period, other than the two (2) accounting periods per fiscal year identified as set forth below, shall not exceed **3.0%**, on an installation basis, of the total number of **career** employees covered by this Agreement. The Employer shall notify the Union, at the National level and at the appropriate installation, of which two (2) accounting periods in each fiscal year during which it may exceed the **3.0%** limitation in that installation; such notice will be provided at least six (6) months in advance of the beginning date of the affected accounting period(s). The Employer will provide the Union at the installation level with an accounting period report listing the number of mail handler casuals at each installation. This report will be provided within fourteen (14) days of the close of the accounting period. In the event that the Employer exceeds the **3.0%** limitation, a remedy, if any, will be determined by the individual facts and on a case-by-case basis.

[See Letters, pages 133-135]

Section 7.1B identifies the supplemental work force as being comprised of casual employees and provides for their limited use. It contains provisions that establish limits on the work hours of non-career casuals to protect career employment and to protect the work hours of career employees, including part-time flexibles.

Note that Article 1 (Section 1.2F) of the National Agreement excludes casuals from the bargaining unit. Thus, casuals are not entitled to the contractual benefits and protections that pertain to employees in the regular work force. In that regard, Arbitrator Gamser held that management had the right to unilaterally determine the rate of pay for casual employees.

Source: National Arbitration Award AD-NAT-0121, Arbitrator H. Gamser, dated June 25, 1980.

In a National Level award, Arbitrator Das found that Section 7.1B **prior to February 15, 2013** established a separate restriction on the employment of casual employees, in addition to the number that may be hired and the limited duration of their employment terms. He found that the Postal Service **could** only employ casual employees to be utilized as a limited term supplemental work force and not in lieu of career employees. He found that the Downes Memorandum, issued on May 29, 1986, set forth a jointly endorsed understanding as to the circumstances under which it **was** appropriate to employ (hire) casual employees to be utilized as a limited term supplemental work force consistent with Section 7.1B:

Generally, casuals are utilized in circumstances such as heavy workload or leave periods; to accommodate any temporary or intermittent service conditions; or in other circumstances where supplemental workforce needs occur. Where the identified need and workload is for other than supplemental employment, the use of career employees is appropriate.

Source: National Arbitration Award Q98C-4Q-C 00100499, dated August 29, 2001, and Memorandum, Director William J. Downes, dated May 29, 1986.

The parties at the National Level agreed that this Das Award (No. Q98C-4Q-C 00100499) **was** binding on the Postal Service and the NPMHU, and that all pending cases should be reviewed for application of this award. **[Note: this Das Award does not apply after February 15, 2013, when the Fishgold Arbitration Award determined the terms and conditions of the 2011 National Agreement.]**

Source: Pre-arbitration Settlement H94M-1H-C 99002460, dated November 1, 2001.

**In another National level decision, also applicable only before February 15, 2013, Arbitrator Das concluded that the durational limitation in Article 7.1.B of the NPMHU-USPS National Agreement prior to 2011 – that is, that casuals “appl[y] only to those 90-day periods in which an individual casual employee is designated as a mail handler casual or performs mail handler work assignments” does not mean that employees who previously have been employed in other crafts during the calendar year for all or part of two 90-day periods of employment may not subsequently be employed as mail handler casuals in the same calendar year. After reviewing the relevant bargaining history from 1981 and 1984, as well as the October 1992 Settlement Agreement on casual employees, Arbitrator Das concluded that the record did not establish that the parties intended to prohibit employment of an individual as a casual to perform mail handler work based on that individual’s previous employment during that calendar year as a casual performing APWU or NALC craft work.**

Source: National Arbitration Award B94M-1B-C 97098443, Arbitrator S. Das, dated February 28, 2011.

**Additionally, the parties at the National Level have agreed that both of the aforementioned Das awards are binding on the Postal Service and the NPMHU until February 15, 2013, and that all pending cases arising prior to that date should be reviewed for application of these awards.**

## **C Mail Handler Assistant Employees (MHAs)**

- 1. The Mail Handler Assistant (MHA) employee work force shall be comprised of noncareer bargaining unit employees.**
- 2. During the course of a service week, in postal installations with less than 200 man years of employment, the Employer will make every effort to ensure that qualified and available part-time flexible employees, if there are any in the installation, are utilized at the straight-time rate prior to assigning such work to MHAs and/or casuals, provided that the reporting guarantee for MHAs is met. This sentence also shall apply to larger installations during the limited period in which they continue to employ part-time flexible employees.**
- 3. The total number of MHAs within a district will not exceed 18.5% of the total number of career mail handlers in that district, but not more than 23.5% in any installation. The Employer will provide the Union at the National level with an accounting period report listing the number of mail handler MHAs at each installation and in each district. This report will be provided within fourteen (14) days of the close of the accounting period. In the event that the Employer exceeds the 18.5% limitation by district, or the 23.5% limitation by installation, a remedy, if any, will be determined by the individual facts and on a case-by-case basis.**
- 4. Any non-NPMHU bargaining unit employee on light or limited duty in the mail handler craft or on a rehabilitation assignment in the mail handler craft who does not hold a bid assignment will not be counted as a career employee for the purpose of determining the number of MHAs who may be employed in the mail handler craft.**
- 5. MHAs shall be hired from an appropriate register pursuant to such procedures as the Employer may establish. They will be hired for terms of 360 calendar days per appointment. Such employees have no daily or weekly work hour guarantees. MHAs will have a break in service of 5 days if reappointed. In addition, any MHA who is scheduled to work and who reports to work in an installation with 200 or more man years of employment shall be guaranteed four (4) hours of work or pay. MHAs at smaller installations will be guaranteed two (2) hours work or pay.**

**(The preceding Section, Article 7.1C, shall apply to Mail Handler Assistant employees.)**

**[See Memo, page 136]**

**PART-TIME FLEXIBLE SCHEDULING PRIORITY:**

Sections 7.1B and **C** further obligate management – **in postal installations with less than 200 man years of employment** – to provide part-time flexibles working at the straight-time rate with a priority in scheduling over casual employees **and/or MHAs, provided that the reporting guarantees for MHAs are met**. This priority applies on a service week rather than daily basis and is limited to part-time flexibles who are qualified and available for the work in question. The forty (40) straight-time hours during the service week can be comprised of work, leave or a combination of work and leave. Thus, management does not necessarily violate the contract when, for example, it utilizes a casual on a Monday when part-time flexibles are not scheduled. A violation would occur when that assignment prevents a part-time flexible employee who could have performed the work on Monday from attaining forty (40) straight-time hours during that service week.

SAPMG James V.P. Conway outlined the intent of this language:

“This provision requires that the employer make every effort to ensure that qualified and available part-time employees with flexible schedules are given priority in work assignments over casual employees. Exceptions to this priority could occur, for example, (a) if both the part-time flexible and the casual employee are needed at the same time, (b) where the utilization of the part-time flexible required overtime on any given day or where it is projected that the part-time flexible will otherwise be scheduled for 40 hours during the service week, or (c) if the part-time flexible employee is not qualified or immediately available when the work is needed to be performed.”

Source: Memorandum, SAPMG James V.P. Conway, dated June 22, 1976.

Arbitrator Gamser ruled that in the event those responsible for constructing the schedule for the service week consistently underestimate the work which will remain at the end of the week for part-time flexibles and do so with some regularity, so that the casuals are employed at the beginning or the middle of the service week and the part-time flexibles do not obtain a forty (40) hour week, this practice would constitute a violation of the contractual requirements. Regarding implementation of the award language, Arbitrator Gamser stated that the part-time flexibles had no right to consecutive days off, avoidance of split shifts or more than a reasonable rest period between shifts.

Source: National Arbitration Award AC-C 13148, Arbitrator H. Gamser, dated December 20, 1979.

## LETTER OF INTENT

**The Board recognizes that the Employer has historically provided qualified and available career employees with work at the straight time rate prior to assigning such work to noncareer employees. The interest arbitration**

**award divides the mail handler noncareer workforce into two distinct categories – MHAs who have a career path and casuals who do not.**

**In creating the MHA category, the parties recognize the value of a noncareer workforce that can ultimately become career employees. Accordingly, the parties are directed to establish a Task Force to address any issues that arise with regard to the scheduling of work during the course of a service week between MHAs and casuals working in the same 200 man year installation.**

### **NUMBER OF CASUALS:**

Casual employment is now calculated and applied on an installation basis. Installations are defined, for this purpose, “to include all facilities for which a mail handler career employee is entitled to bid, as provided under Article 12, Section .3C.” See the Letter of Intent, USPS Installations, reprinted **at the end of this Article.**

Within each installation, casuals may be employed in any accounting period, except as outlined below, up to a number not to exceed **3.0%** of the total number of **career** employees covered by the NPMHU National Agreement; i.e., the number of career employees in the mail handler bargaining unit. **(MHAs are not counted in determining this number as they are non-career employees.)** Additionally, management is permitted to exceed that percentage in each installation in two (2) accounting periods in each fiscal year, so long as notice is provided to the union, at both the national and local levels, at least six (6) months in advance of the beginning date of the affected accounting period(s). The parties have agreed that the local level notice will be made to the Local President having jurisdiction over the installation, who will then provide that information to the appropriate Branch President or other local Union official.

In a 2004 Memorandum of Understanding, the parties agreed that, notwithstanding the adoption of new monthly reporting procedures by the Postal Service, the term “accounting period” would continue to refer to two consecutive pay periods, comprising a total of 28 days. The pay periods in which management could exceed the **3.0%** limit on casual employment during each fiscal year would be referred to as casual exception periods (CEPs); the casual exception periods would be selected from the periods defined by the National level parties and outlined in an attachment to the MOU.

The parties further agreed that the new monthly reporting procedures have no substantive impact on the provisions of Section 7.1B. The reports previously generated on an “accounting period” basis (see the LOIs reprinted at the end of this Article) would be provided to the union on a pay period basis, within 14 days

of the close of each pay period; this represents a change only in the frequency with which the reports are provided.

Source: Memorandum of Understanding, dated August 4, 2004.

Casuals are to be hired and assigned designation/activity (D/A) codes on the basis of the work that they are being hired to perform; casuals hired to perform mail handler duties are to be assigned code 62-0. When casuals are hired, management must ensure that a realistic assessment is made to identify the primary work needed to be performed, and accordingly, to use the appropriate D/A code. Management has the right to assign clerk casuals (who are assigned D/A code 61-0) or casuals from other crafts to do mail handler work, provided that the current percentage requirements for casuals are not exceeded. Regardless of the D/A code assigned, the number of casuals performing mail handler work assignments at any given time should not exceed the percentage outlined in this section.

Source: Pre-arbitration Settlement H1M-5L-C 22108, dated December 4, 1985; Step 4 Grievances H4M-4G-C 38798, dated May 19, 1988, and I90M-1L-C 93035259, dated October 28, 1993.

## LETTER OF INTENT

### TRANSITION PERIOD

**The 2016 National Agreement makes structural changes to the non-bargaining unit workforce and, therefore, creates a need for a transition period to implement the changes. The parties agree to a transition period not to exceed 120 days from the date of the union's ratification of the Agreement.**

**During the transition period, the number of casuals employed at any installation may be maintained at current levels or at 5.0%, whichever is lower. An exception will be made for installations that have local agreements allowing temporary use of additional casuals; such agreements will remain enforceable, provided that after the local agreement expires (if within the 120 day period) the number of casuals will be limited to 5.0%. Any new non-career employees hired during the transition period will be MHAs, unless the installation is below 3.0% casuals, in which case the installation may hire new casuals up to the 3.0% cap before hiring MHAs. At no time during the transition period will the combination of casuals and MHAs exceed 21.5% of the total number of career mail handler employees in a district and 24.5% in any installation except as provided for in Article 7, Section 1B.**

**After 120 days from the date of the union’s ratification of the Agreement, the language of Article 7, Section 1B2 as supplemented by the Letter of Intent re: Installation Measurement of Casuals and the language of Article 7, Section 1C3 concerning MHA hiring shall be in full force and effect.**

**Question: How are limitations on the number of casuals permitted during the 120-day transition determined?**

**Answer: Any casual on the rolls as of the date of the union’s ratification of the 2016 National Agreement, as determined by the AP Report/AAW996P1 report, establishes the “current levels” referenced in the Letter of Intent re Transition Period.**

The parties agree that Section 7.1B does not prohibit the Postal Service from using temporary employees hired through a personnel agency (“temporary agency employees”) as part of the supplemental workforce under Section 7.1B, provided that such temporary agency employees are counted as casuals and are subject to all of the limits on employment and use of casuals as set forth in Section 7.1B and related agreements. Consistent with the National Agreement, the same information that must be provided to the Union in negotiated reports for tracking the hiring and work hours of mail handler casuals must be provided to the union whenever temporary agency employees are hired as supplemental employees to perform mail handler duties. The parties further recognize that, under Section 7.1B and the related Letter of Intent re: PSDS-Operation Numbers Accounting Period Report, the Postal Service is required to provide the Union, “at the installation level, with a report which lists the number of non-mail handler casuals and hours worked in each facility within that installation, who have worked in those operations designated” as specifically listed in Section 7.1B and the Letter of Intent.

Source: Step 4 Grievances G98M-1G-C 02171546, B98M-1B-C 02045636, and B98M-1B-C 20272708, dated March 1, 2006.

#### **TERM OF CASUAL EMPLOYMENT:**

**Casuals may be hired for a term not to exceed 360 calendar days per appointment. The number of casuals who may be employed in any accounting period should not exceed 3.0% on an installation basis. This 3.0% cap may be exceeded in two accounting periods in each fiscal year.**

**The parties agree that the Employer will notify the Union, at the National level and at the appropriate installation, of which two (2) accounting periods in each fiscal year during which it may exceed the 3.0% limitation in that installation; such notice will be provided at least six (6) months in advance of the beginning date of the affected accounting period(s).**

**Source: Step 4 Grievance E98M-4E-C 01155030, dated August 14, 2012.**

In a National Level Award, Arbitrator Das found that “[t]he durational limitation in Article 7.1.B of the . . . National Agreement applies only to those 90-day periods in which an individual casual employee is designated as a mail handler casual or performs mail handler work assignments.”

Source: National Arbitration Award B94M-1B-C 97098443, Arbitrator S. Das, dated February 28, 2011.

## **REPORTS:**

Reports on the number and work hours of mail handler casuals are provided at the installation level on a pay-period basis, within fourteen (14) calendar days of the end of each pay period. See the Letter of Intent, Casuals – Accounting Period Report and the Letter of Intent (Unnamed), reprinted at the end of this Article.

## **MAIL HANDLER ASSISTANTS – MHAs**

**MHAs are non-career bargaining unit employees that are hired for terms of 360 calendar days. They are assigned DA Code 82-0.**

**Question: May an MHA be appointed to a term less than 360 days?**

**Answer: An MHA cannot be appointed to a term less than 360 days but MHAs may be separated during their term of appointment for lack of work at any time or in the case of removal for cause.**

**If reappointed after the 360-day term, MHAs will have a break in service of 5 days.**

**Question: Does the five-day break between MHA 360-day appointments refer to five calendar days or work days?**

**Answer: Five calendar days.**

**Question: Will MHAs be hired as Level 5 MHAs?**

**Answer: No.**

## **NUMBER OF MHAs**

**The total number of MHAs that are employed within a district cannot exceed 18.5% of the total number of career mail handlers in that district. In addition, there may be no more than 23.5% in each installation.**

**When calculating the total number of career employees in a district for purposes of determining the numbers of MHAs that may be employed, the following are not included: Any non-NPMHU bargaining unit employee on a light or limited duty assignment in the mail handler craft or on a rehabilitation assignment in the mail handler craft who does not hold a bid assignment.**

**On the issue of exceeding MHA caps, the National parties have agreed that the percentage of MHA employees allowed within each installation and/or district is determined at the National level. Therefore, any agreements reached by the local parties to exceed MHA caps must have National level concurrence by both parties prior to implementation of said agreement. See Letter of Intent Re Mail Handler Assistants in Excess of Percentage Caps, discussed below. Similar rules apply with regard to the casual cap, as set forth in the Letter of Intent Re Casuals in Excess of 3%, discussed below.**

## **REPORTS**

**The Union at the National level will be provided an accounting period report listing the number of mail handlers and MHAs at each installation and in each district. This report will be provided within fourteen days of the close of each accounting period.**

**Question: In determining MHA caps, is the number of MHAs “rounded” for percentage purposes?**

**Answer: No, under Article 7.1C3 of the 2016 National Agreement, the number of MHAs shall not exceed 18.5% of the total number of career mail handlers in that district, and not more than 23.5% in any installation.**

**Question: How will the district cap on MHAs be enforced when district boundaries include multiple installations?**

**Answer: The MHA caps for districts will be monitored at the National level. The Postal Service will provide the National Union with an accounting period report listing the number of MHAs in each installation and in each district. If the MHA cap exceeds the district percentage, the appropriate Regional Director will file a grievance directly to Step 3 within fourteen (14) days of the receipt of the accounting period reports from the Postal Service.**

**Question: How will the installation cap on MHAs be enforced?**

**Answer: If the MHA cap is violated within an installation, the local union files a grievance within fourteen (14) days of the national union's receipt of the accounting period reports from the Postal Service.**

**Question: What is the MHA cap if an installation is its own district?**

**Answer: 18.5%.**

## **Section 7.2 Employment and Work Assignments**

- A Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken:
- A1 All available work within each separate craft by tour has been combined.
  - A2 Work of different crafts in the same wage level by tour has been combined.
- B The appropriate representatives of the affected Unions will be informed in advance of the reasons for establishing the combination full-time assignments within different crafts in accordance with this Article.

Section 7.2A recognizes that, normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and to provide necessary flexibility, Section 7.2A also provides that management may, combine duties from different crafts, occupational groups or levels to establish full-time duty assignments after it has satisfied, in sequential order as outlined hereunder, the conditions set forth in A1 and A2.

Section 7.2A1 requires, first, that all available work within each craft by tour be combined prior to combining work of different crafts. After that has been accomplished, Section 7.2A2 provides that management may combine work of different crafts in the same wage level by tour. After both of these prerequisites are satisfied, management may establish full-time duty assignments by combining work of different crafts, occupational groups and levels.

A combined full-time duty assignment created in accordance with the provisions of this section cannot include rural letter carrier duties. Only duties normally performed by bargaining unit employees covered by the NPMHU, APWU and NALC National Agreements may be combined. See further the Memorandum of Understanding, Cross Craft, reprinted at the end of this article.

Section 7.2B requires that advance notice of the reasons for combining full-time assignments within different crafts must be given to the affected unions at the local level.

- C In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.
- D During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

[See Memo, page 147]

Section 7.2C and D provide that management may assign employees across craft lines when certain conditions are met. The Memorandum of Understanding, Cross Craft, applies to these assignments as well.

Section 7.2C provides for assignment of an employee to work in another craft at the same wage level due to insufficient work in his/her own craft. This may affect a full-time, part-time regular or part-time flexible for whom there is "insufficient work" on a particular day to attain their respective work hour guarantees, as provided in Article 8 (Sections 8.1 and 8.8).

Section 7.2D permits assignment of an employee to perform work in the same wage level in another craft or occupational group during conditions of an exceptionally heavy workload in another craft or occupational group and a light workload in the employee's own craft or occupational group.

**In those circumstances where cross craft assignments are permitted under Article 7.2 C & D, employees from other crafts may not be assigned to work in lower wage levels in the Mail Handler Craft.**

**Source: National Pre Arbitration Settlement, Q84M-4Q-C 77002202, dated September 4, 2008.**

Arbitrator Bloch ruled that management may not temporarily assign employees across crafts except in the restrictive circumstances outlined in Section 7.2C and D. He interpreted the provisions as follows:

“Taken together, these provisions support the inference that Management’s right to cross craft lines is substantially limited. The exceptions to the requirement of observing the boundaries arise in situations that are not only unusual but also reasonably unforeseeable. There is no reason to find that the parties intended to give Management discretion to schedule across craft lines merely to maximize efficient personnel usage; this is not what the parties have bargained. That an assignment across craft lines might enable Management to avoid overtime in another group for example, is not, by itself, a contractually sound reason. It must be shown either that there was “insufficient work” for the classification or, alternatively, that work was “exceptionally heavy” in one occupational group and light, as well, in another.

Inherent in these two provisions, as indicated above, is the assumption that the qualifying conditions are reasonably unforeseeable or somehow unavoidable. To be sure, Management retains the right to schedule tasks to suit its needs on a given day. But the right to do this may not fairly be equated with the opportunity to, in essence, create “insufficient” work through intentionally inadequate staffing. To so hold would be to allow Management to effectively cross craft lines at will merely by scheduling work so as to create the triggering provisions of Section 7.2[C and D]. This would be an abuse of the reasonable intent of this language, which exists not to provide means by which the separation of crafts may be routinely ignored but rather to provide the employer with certain limited flexibility in the face of pressing circumstances . . .”

Source: National Arbitration Award A8-W-0656, Arbitrator R. Bloch, dated March 10, 1982.

As a general proposition, in those circumstances under Section 7.2C and D in which a clear contractual violation is evidenced by the fact circumstances, a “make whole” remedy involving the payment at the appropriate rate to the available and qualified employee who had a contractual right to the work would be appropriate. Arbitrator Bloch awarded payment at the overtime rate based on the fact circumstances in the above case.

**Question:** Does withholding under Article 12 automatically provide the required justification to cross crafts or occupational groups under the terms of Section 7.2?

**Answer:** No. Withholding pursuant to Article 12 of the National Agreement does not automatically create a light or heavy workload in work assignments or a craft; nor does it provide license to indiscriminately cross crafts merely to maximize efficient personnel usage. In accordance with Section 7.2, it must be shown that there was “insufficient work” on a given occasion or, alternatively, that work was “exceptionally heavy” in one occupational group and light in another.

Source: Memorandum, SAPMG S. Cagnoli, dated December 4, 1991.

**Question:** May management work employees across craft lines without restriction in smaller offices, such as those with fewer than 100 employees?

**Answer:** No. The restrictions on management's right to work employees across craft lines found in Section 7.2 apply regardless of the size of the office.

**Question:** Does management's desire not to pay overtime constitute an acceptable basis for crossing crafts under Sections 7.2C or D?

**Answer:** No. The desire to avoid overtime is not, by itself, a contractually sound reason to cross crafts.

Source: National Arbitration Award A8-W-0656, Arbitrator R. Bloch, dated March 10, 1982.

### **Section 7.3 Employee Complements**

**There will be no Part-Time Flexible (PTF) employees working in the mail handler craft in installations which have 200 or more man years of employment.**

The number of part-time regular mail handlers who may be employed in any period in a particular installation shall not exceed 6 percent of the total number of **career** employees in that installation covered by this Agreement.

In smaller installations with part-time flexible employees, the Employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all postal installations. A part-time flexible employee working eight (8) hours within ten (10), on the same five (5) days each week over a six-month period will demonstrate the need for converting the assignment to a full-time position.

[See Memos, page 148]

Whether or not an installation is classified as a 200 man year office is determined at the beginning of each contract term. That list of installations does not change during the term of that Agreement regardless of any increase or decrease in employee complement. The 200 man year threshold is determined by counting all of the crafts which bargained jointly in 1978; i.e., mail handler, clerk, motor vehicle, maintenance, and letter carrier.

**Question: There will be no PTF Mail Handler employees in 200 or more man-year offices. What date will be used to determine the 200 man-year**

**office? Will the designation of the office remain the same size office during the life of the National Agreement?**

**Answer:** Normally, May 21, 2016 would be the designated date and the office size would remain constant for the life of the May 21, 2016 – September 20, 2019 agreement. For purposes of the 2016 National Agreement only, the parties at the National level have agreed that the 200 man-year report will be calculated using the 26 pay periods that covered the period from February 20, 2016 to February 17, 2017, and the office size will remain constant for the remaining life of the 2016 National Agreement.

The report listing all 200 man year offices under the current National Agreement is included in the CIM Resource Manual.

**Question:** How was the number of man years in an office calculated for purposes of this provision?

**Answer:** The total number of paid hours accumulated by career employees in an office during the 26 pay periods immediately preceding the term of the current agreement is divided by 2080 to obtain the number of man years. Note that the hours of any transitional employees in that office are excluded from the calculation.

Part-time regulars may be employed up to six percent (6%) of the total number of mail handler career employees in the installation. Scheduling of part-time regulars is covered in the Memorandum of Understanding, Part-time Regulars, reprinted at the end of this Article.

As outlined below, Section 7.3 contains additional provisions, applicable to **smaller installations**, which provide for the creation of full-time positions.

Section 7.3 also provides that “the Employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work week schedules at all postal installations.”

Section 7.3 further provides that working a part-time flexible employee eight (8) hours within ten (10), on the same (5) days each week over a six-month period demonstrates the need to convert the assignment to a full-time position.

Time spent on approved annual leave does not constitute an interruption of the six-month period, except where the annual leave is used solely for purposes of rounding out the workweek when the employee otherwise would not have worked.

Source: Step 4 Grievance H7N-2A-C 2275, dated April 13, 1989.

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
UNITED STATES POSTAL SERVICE  
AND THE  
NATIONAL POSTAL MAIL HANDLERS UNION**

**Re: Mail Handler Assistant Employees**

**The following general principles concerning Mail Handler Assistant Employees (MHAs) shall apply:**

**1. General Principles**

- a. The MHA work force is comprised of noncareer, mail handler bargaining unit employees.**
- b. MHAs shall be hired for terms of 360 calendar days and will have a break in service of 5 days if reappointed.**
- c. Leave provisions for MHAs are included in Attachment A to this MOU.**
- d. For MHA percentage use allowances, see Article 7.1C.**
- e. The Postal Service will provide a report every four week reporting period with information needed to monitor compliance with the provisions above, i.e., the total number of career bargaining unit employees and MHAs in the mail handler craft by installation.**
- f. Effective November 26, 2016, the hourly rates for MHAs shall be as follows:**

**Hourly Rate: Level 4 at \$15.12 and Level 5 at \$15.94**

**Adjustments to these hourly rates shall be in accordance with Article 9.7. Should it be necessary for recruitment or retention of MHAs, the Postal Service may pay higher hourly rates, with the concurrence of the Union.**

- g. When the Postal Service hires new mail handler full-time career employees, MHAs within the installation will be converted to full-time regular career status to fill such vacancies based on their relative standing in the installation, which is determined by their original MHA appointment date in that installation. A MHA who does not accept the career**

**opportunity will not lose his/her relative standing for future career opportunities.**

## **2. Contract Provisions**

**Only the following articles and portions of articles of the National Agreement apply to MHAs as outlined below:**

**Article 1**

**Article 2**

**Article 3**

**Article 5**

**Article 7.1C**

**Article 8**

### **HOURS OF WORK**

#### **Section 2. Work Schedules**

**A. The employee's service week shall be a calendar week beginning at 12:01 a.m. Saturday and ending at 12 midnight the following Friday.**

**B. The employee's service day is the calendar day on which the majority of work is scheduled. Where the work schedule is distributed evenly over two calendar days, the service day is the calendar day on which such work schedule begins.**

#### **Section 3. Exceptions**

**\* \* \* \* \***

**MHAs will be scheduled in accordance with Section 2, A and B of this Article.**

#### **Section 4. Overtime Work**

**\* \* \* \* \***

#### **G. Overtime Work for MHAs**

**MHAs shall be paid overtime for work performed in excess of forty (40) work hours in any one service week. Overtime pay for MHAs is to be paid at the rate of one and one-half (1-1/2) times the basic hourly straight time rate.**

**When an opportunity exists for overtime for qualified and available full-time employees, doing similar work in the work location where the employees regularly work, prior to utilizing a MHA in excess of eight (8) work hours in a service day or forty (40) hours in a service week, such qualified and available full-time employees on the appropriate Overtime Desired List will be selected to perform such work in order of their seniority on a rotating basis.**

### **Section 7. Night Shift Differential**

**For time worked between the hours of 6:00 p.m. and 6:00 a.m., MHAs shall be paid additional compensation at the applicable flat dollar amount at each pay grade and step in accordance with the attached Table Four.**

### **Section 8. Guarantees**

**D. Any MHA who is scheduled to work and who reports to work in an installation with 200 or more man years of employment shall be guaranteed four (4) hours of work or pay. MHAs at smaller installations will be guaranteed two (2) hours work or pay.**

### **Section 9. Wash-up Time**

**Installation heads shall grant reasonable wash-up time to those employees who perform dirty work or work with toxic materials. The amount of wash-up time granted each employee shall be subject to the grievance procedure.**

## **Article 9 SALARIES AND WAGES**

### **Section 7. Mail Handler Assistant Employees**

**In addition to the general increases provided in Article 9.1, MHAs will receive an increase of 1.0% annually, for a total of 2.2% effective November 26, 2016, 2.3% effective November 25, 2017, and 2.3% effective November 24, 2108.**

**MHAs will also receive hourly wage increases as follows:**

- **\$0.09 per hour effective November 26, 2016**
- **\$0.20 per hour effective May 26, 2018**
- **\$0.21 per hour effective May 25, 2019**

**All percentage increases are applied to the wage rates in effect on May 20, 2016.**

## **Article 10 LEAVE**

### **Section 2. Leave Regulations**

**A. The leave regulations in Subchapter 510 of the Employee and Labor Relations Manual, insofar as such regulations establish wages, hours and working conditions of employees covered by this Agreement, other than MHAs, shall remain in effect for the life of this Agreement.**

**B. Career employees will be given preference over noncareer employees when scheduling annual leave. This preference will take into consideration that scheduling is done on a tour-by-tour basis and that employee skills are a determining factor in this decision.**

**C. Article 30 of the National Agreement and Local Memoranda of Understanding provisions do not apply to MHAs, except as specifically referenced in the 2016 National Agreement and as follows: During the local implementation period, the parties may agree to include provisions in the local memoranda of understanding to permit MHAs to apply for annual leave during choice vacation periods, as defined in Article 10 of the National Agreement. Granting leave under such provisions must be contingent upon the MHA having a leave balance of at least forty (40) hours.**

## **Article 11 HOLIDAYS**

**\* \* \* \* \***

### **Section 1. Holidays Observed**

**The following six (6) days shall be considered holidays for MHAs:**

**New Year's Day  
Memorial Day  
Independence Day**

**Labor Day  
Thanksgiving Day  
Christmas Day**

**\* \* \* \* \***

**Section 3. Payment**

**C. The number of hours of holiday leave pay for MHAs will be based on the following:**

- **200 Man Year offices – 8 hours**
- **POSTPlan offices – 4 hours**
- **All other offices – 6 hours**

**MHAs who work on a holiday may, at their option, elect to have their annual leave balance credited with 6 or 8 hours (as applicable).**

**\* \* \* \* \***

**Section 6. Holiday Schedule**

**D. Mail Handler Assistant Employees**

**MHAs will be scheduled for work on a holiday or designated holiday after all full-time or part-time volunteers are scheduled to work on their holiday or designated holiday. They will be scheduled, to the extent possible, prior to any full-time volunteers or non-volunteers being scheduled to work a nonscheduled day or any full-time non-volunteers being required to work their holiday or designated holiday. If the parties have locally negotiated a pecking order that would schedule full-time volunteers on a nonscheduled day, the Local Memorandum of Understanding will apply.**

**Article 14**

**Article 15**

**Article 16, to the extent specified below.**

**Article 17, Sections 2, 3, 4, 5, and 6**

**Article 18**

**Article 19**

## **HANDBOOKS AND MANUALS**

**\* \* \* \* \***

**Article 19 shall apply in that those parts of all handbooks, manuals and published regulations of the Postal Service, which directly relate to wages, hours, or working conditions shall apply to MHAs only to the extent consistent with other rights and characteristics of MHAs provided for in this Agreement. The Employer shall have the right to make changes to handbooks, manuals and published regulations as they relate to MHAs pursuant to the same standards and procedures found in Article 19 of this Agreement.**

**Article 20**

**Article 22**

**Article 23**

**Article 24**

**Article 27**

**Article 28**

**Article 31**

**Article 32**

**Article 34**

**Article 35**

**Article 36**

**Article 37.4**

**Article 39**

**Only the following Memoranda of Understanding from the 2016 National Agreement shall apply to MHAs:**

**Leave Sharing**

**LWOP In Lieu of SL/AL**

**Administrative Leave for Bone Marrow, Stem Cell, Blood Platelet, and Organ Donations**

**Bereavement Leave**

**Interest on Back Pay**

**Processing of Post-Separation and Post-Removal Grievances**

**MHA Separations and Reappointments**

**One-Time MHA Conversion**

**Relative Standing of Mail Handler Assistants and Subsequent Seniority Upon Conversion to Career Mail Handler**

**Potential for Mail Handler Assistant PTF Opportunities**

**Filling of Residual Vacancies**

**PTFs in 200 Man Year Facilities Subject to Excessing**

**Purge of Warning Letters**

**Wounded Warrior Leave**

**3. Other Provisions**

**A. Article 15**

**1. The parties recognize that MHAs will have access to the grievance procedure for those provisions which the Board Award applies to MHAs.**

**2. Nothing herein will be construed as a waiver of the employer's obligation under the National Labor Relations Act. MHAs will not be discharged for exercising their rights under the grievance-arbitration procedure.**

**3. The separation of MHAs upon completion of their 360-day term and the decision to not reappoint MHAs to a new term are not grievable, except where it is alleged that the decision to not reappoint is pretextual. MHAs may be separated during their term of appointment for lack of work at any time. Such separation is not grievable except where it is alleged that the separation is pretextual. Separations for lack of work shall be by inverse relative standing in the installation. MHAs separated for lack of work**

**before the end of their term will be given preference for reappointment ahead of other MHAs with less relative seniority and ahead of other applicants who have not served as MHAs, provided that the need for hiring arises within twelve (12) months of their separation.**

**MHAs may be disciplined or removed within the term of their appointment for just cause and any such discipline or removal will be subject to the grievance arbitration procedure, provided that within the immediately preceding six months, the employee has completed ninety (90) work days, or has been employed for 120 calendar days (whichever comes first) of their initial appointment.**

**In the case of removal for cause within the term of an appointment, a MHA shall be entitled to advance written notice of the charges against him/her in accordance with the provisions of Article 16 of the National Agreement.**

**4. Discipline for an MHA who does have access to the grievance-arbitration procedure does not generally have to be issued in the same progressive manner as discipline issued to a career employee. However, an appropriate element of just cause is that discipline should be progressive and corrective in nature rather than punitive. When management removes or otherwise disciplines an MHA, determining whether the disciplinary action taken is appropriate must be based on the individual facts and circumstances of each case.**

#### **B. Article 25, Higher Level Pay**

**In the event a MHA is temporarily assigned to a higher level position, such employee will be paid at the higher level only for the time actually spent on such job. This language should not be construed to encourage the Postal Service to temporarily assign such employees to higher level positions. When the opportunity exists for higher level assignment, the principle of preference for career employees over MHAs should be utilized.**

#### **C. Health Insurance**

**After an initial appointment for a 360-day term and upon reappointment to another 360-day term, any eligible non-career MHA who wants to pay health premiums to participate in the Federal Employees Health (FEHB) Program on a pre-tax basis will be required to make an election to do so in accordance with applicable procedures. The total cost of health insurance is the responsibility of the non-career MHA except as provided below.**

**Beginning in Plan Year 2014, the Postal Service will make a bi-weekly contribution to the total premium for any MHA who wishes to participate in the USPS Non-career Health Care Plan (USPS Plan) equal to the greater of (a) \$125, or (b) the minimum required by the Patient Protection and Affordable Care Act, and applicable regulations, for self-only. The MHA is fully responsible for the cost of premiums for any health insurance plan beyond a self-only plan. Any MHA employee wishing to make their health care contribution on a pre-tax basis will be required to make an election to do so in accordance with applicable procedures. All MHAs will be eligible for the USPS Plan within a reasonable period from the date of hire and entry into a pay status, consistent with the requirements established under the Patient Protection and Affordable Care Act.**

**If for any reason the USPS Plan is not available to a MHA, the Postal Service will make a bi-weekly contribution for any eligible MHA who selects the Mail Handler Benefit Plan (MHBP) Value Plan or any other plan offered by the FEHB Program, which is equal to or lower in cost to the Postal Service than the MHBP Value Plan for self-only coverage. This contribution for any eligible MHA shall be equal to the greater of (a) \$125, or (b) the minimum required by the Patient Protection and Affordable Care Act, and applicable regulations, for self-only.**

#### **D. MHA Career Opportunity**

**When the Postal Service determines in accordance with contractual provisions that it has needs to fill vacancies with new career employees, available and qualified MHAs will be converted to fill such vacancies based on their relative standing in the installation, which is determined by their initial MHA appointment date in that installation.**

#### **E. Retirement Savings Plan**

**The parties will explore the steps necessary for the establishment of 401(k)-type retirement savings plans and/or payroll allotments for Individual Retirement Accounts for MHAs. Alternatively, if the NPMHU establishes a 401(k) retirement savings plan for MHAs, the Postal Service agrees to implement the necessary steps for payroll deductions for this plan. The Postal Service will not be required to make any matching contributions as part of such plans.**

### **ATTACHMENT A MAIL HANDLER ASSISTANT EMPLOYEE (MHA) ANNUAL LEAVE PROVISIONS**

## **I. GENERAL**

**A. Purpose.** Annual leave is provided to MHAs for rest, recreation, emergency purposes, and illness or injury.

**1. Accrual of Annual Leave.** MHAs earn annual leave based on the number of hours in which they are in a pay status in each pay period.

<b>Rate of Accrual</b>	<b>Hours in Pay Status</b>	<b>Hours of Annual Leave Earned Per Pay Period</b>
1 hour for each unit of 20 hours in pay status in each pay period	20 40 60 80	1 2 3 4 (max)

**2. Biweekly Crediting.** Annual leave accrues and is credited in whole hours at the end of each biweekly pay period.

**3. Payment For Accumulated Annual Leave.** A separating MHA may receive a lump-sum payment for accumulated annual leave subject to the following condition:

**B.** A MHA whose separation is effective before the last Friday of a pay period does not receive credit or terminal leave payment for the leave that would have accrued during that pay period.

## **II. AUTHORIZING ANNUAL LEAVE**

**A. General.** Except for emergencies, annual leave for MHAs must be requested on Form 3971 and approved in advance by the appropriate supervisor.

**B. Emergencies and Illness or Injury.** An exception to the advance approval requirement is made for emergencies and illness or injury; however, in these situations, the MHA must notify appropriate postal authorities as soon as possible as to the emergency or illness/injury and the expected duration of the absence. As soon as possible after return to duty, MHAs must submit Form 3971 and explain the reason for the emergency or illness/injury to their supervisor. Supervisors approve or disapprove the leave request. When the request is disapproved, the absence may be recorded as AWOL at the discretion of the supervisor as outlined in Section IV.B below.

### **III. UNSCHEDULED ABSENCE**

**A. Definition.** Unscheduled absences are any absences from work that are not requested and approved in advance.

**B. MHA Responsibilities.** MHAs are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences. In addition, MHAs must provide acceptable evidence for absences when required.

### **IV. FORM 3971, REQUEST FOR, OR NOTIFICATION OF, ABSENCE**

**A. Purpose.** Application for annual leave is made in writing, in duplicate, on Form 3971, Request for, or Notification of, Absence.

**B. Approval/Disapproval.** The supervisor is responsible for approving or disapproving application for annual leave by signing Form 3971, a copy of which is given to the MHA. If a supervisor does not approve an application for leave, the disapproved block on Form 3971 is checked and the reasons given in writing in the space provided. When a request is disapproved, the reasons for disapproval must be noted. AWOL determinations must be similarly noted.

**Question: Are MHAs assigned a Postal Service Employee Identification Number (EIN) and Personal Identification Number (PIN)?**

**Answer: Yes.**

**Question: Do MHAs have access to LiteBlue?**

**Answer: Yes.**

**Question: What is the occupational code and designation activity code for MHAs?**

**Answer: The occupational code is 2315-0085 and designation activity code is 82-0.**

**Question: May MHAs hold dual appointments?**

**Answer: No.**

**Question: Will reinstatement-eligible former career employees and veterans eligible for direct career appointment under Veterans' Recruitment**

**Appointment or because of their 30 percent or higher disability status be eligible for noncompetitive consideration for MHA employment?**

**Answer: Yes.**

**Question: If an MHA is reappointed to a new term, do they have to execute a new Standard Form 1187 to remain a member of the Union?**

**Answer: No. The union enrollment is active and appropriate withholding occurs if an MHA separates and returns to the same non-career MHA job within 180 days of the separation. The enrollment is also active if the MHA is promoted to a career mail handler bargaining unit position.**

**Question: Can MHAs access eReassign and bid on assignments?**

**Answer: No, only career bargaining employees can access eReassign for voluntary reassignment opportunities.**

**Question: What is the term of employment for MHAs?**

**Answer: MHAs will be hired for terms of 360 calendar days per appointment but may be separated during their term of appointment for lack of work at any time or in the case of removal for cause.**

**Question: How are limitations on the number of casuals permitted during the 120 day transition following the 2016 National Agreement determined?**

**Answer: Any casual on the rolls as of the date of ratification – that is, February 10, 2017 – as determined by the AP Report/AAW996P1 report establishes the "current levels" referenced in the Transition Period Letter of Intent.**

**Question: Does the five day break between MHA 360 day appointments refer to five calendar or work days?**

**Answer: Five calendar days.**

**Question: May an MHA be appointed to a term of less than 360 days?**

**Answer: An MHA cannot be appointed to a term of less than 360 days but MHAs may be separated during their term of appointment for lack of work at any time or in the case of removal for cause.**

**Question: Can casuals be converted to MHAs?**

**Answer: Casuals will be eligible to take the appropriate examinations like any other member of the general public and, if reached during the competitive hiring process, are eligible to be hired as MHAs.**

**Question: Will MHAs be hired as Level 5 MHAs?**

**Answer: No**

## **MEMORANDUM OF UNDERSTANDING**

### **MAIL HANDLER ASSISTANT (MHA) SEPARATIONS AND REAPPOINTMENTS**

The parties recognize the Employer has historically provided qualified and available career employees with work at the straight time rate prior to assigning such work to non-career employees. MHAs, although non-career, have a career path while casual employees do not. MHAs are separated for five days between appointments. When there is a lack of work, casuals at the site will be separated, to the extent possible, prior to separating any MHAs.

Separations of MHAs for lack of work before the end of their term shall be by inverse relative standing on the appropriate MHA roll and such separations are not grievable except where the separations are alleged to be pretextual. If an MHA is being considered for non-reappointment solely due to lack of work and one or more MHAs with lower relative standing are employed at the site, then the MHA with the lowest relative standing is to be separated and the MHA being considered for non-reappointment is to be reappointed.

MHAs separated for lack of work before the end of their term will be given reappointment ahead of other MHAs with less relative standing on the MHA roll provided the need for hiring arises within (1) year of the separation. MHAs who meet these conditions, will be offered the opportunity for reappointment in inverse order of their separation.

This MOU changes some of the rules governing the separation and reappointment of MHAs by making clear that: (1) when there is a lack of work, casuals at the site will be separated, to the extent possible, prior to separating any MHAs and that such separations are not grievable except where the separations are alleged to be pretextual; (2) if an MHA is being considered for non-reappointment solely due to lack of work and one or more MHAs with lower relative standing are employed at the site, then the MHA with the lowest relative standing is to be separated and the MHA being considered for non-reappointment is to be reappointed; and (3) if MHAs are separated for lack of work before the end of their term, such

**separations must be by inverse relative standing and separated MHAs will be given preference (for up to 12 months) for reappointment ahead of other MHAs with less relative standing or in inverse order of their separation.**

## **MEMORANDUM OF UNDERSTANDING**

### **ONE-TIME MHA CONVERSION**

**The U.S. Postal Service and the National Postal Mail Handlers Union, A Division of the Laborers' International Union of North America, AFL-CIO, agree to the following:**

- **All Mail Handler Assistants (MHAs) in 200 Man Year offices with a relative standing date prior to 2.5 years from the ratification date of the 2016 National Agreement shall be converted to career status.**
- **The conversion to career status will occur as soon as administratively practicable, but no later than sixty (60) days from the ratification date of the 2016 National Agreement.**
- **MHAs converted to career status under this provision will not be required to serve a probationary period provided they have successfully completed one 360-day term as a Mail Handler Assistant.**
- **After one year from the ratification date of the 2016 National Agreement, the parties will evaluate the possibility of another one-time conversion.**

**All MHAs in 200 or more man year installations who have over 2.5 years of service as of the ratification date of the 2016 National Agreement will be converted to career status as full-time employees. These conversions will be completed as soon as administratively practicable, but no later than 60 days after the ratification date for the 2016 National Agreement (i.e., April 11, 2017). One year later, the parties will evaluate the possibility of another one-time conversion of MHAs.**

## **LETTER OF INTENT**

### **CASUALS - ACCOUNTING PERIOD REPORT**

**The Employer will provide an accounting period report which lists the number and work hours of mail handler casuals at each installation. The report will be provided to the designated Union officials within fourteen (14) days of the close of each accounting period.**

## LETTER OF INTENT

The Employer will provide to the designated Union officials, within fourteen (14) days of the close of each accounting period, a report listing the number and work hours of mail handler casualls calculated and listed for each Friday of each accounting period.

These two Letters of Intent set forth reporting requirements with regard to the number and work hours of mail handler casualls. The reports are generated by the Minneapolis Information Service Center and are identified as, respectively, Reports AAW990P1 and AAW996P1.

The parties continue to disagree as to whether the report (AAW996P1) referenced in this Letter of Intent, which appears on page **123** of the **2016** National Agreement, was negotiated for informational purposes only or for enforcement of the National Agreement. The parties reserve the right to address that issue separately from the disposition of this case.

Aside from our dispute regarding the AAW996P1 report, the parties agree that the information that can be used by either party to prove compliance with or violation of Article 7.1B of the National Agreement is not limited to such negotiated reports provided the information is relevant and consistent with the provisions of Articles 17 and 31, the National Labor Relations Act, and any other applicable laws and regulations. Disputes about the relevance of information will be resolved in the grievance procedure, before the NLRB, or in any other appropriate forum.

Source: Step 4 Grievance B90M-1B-C 94052048, dated August 8, 2007.

## LETTER OF INTENT

### CASUALS - IN EXCESS OF 3.0%

With the exception of the two (2) accounting periods in each fiscal year referenced in Article 7.1B, the parties acknowledge that there are certain situations of limited duration that occur during the course of the year when the Employer must employ casualls in excess of the **3.0** percent limitation.

The parties understand and agree that the type of circumstances that could result in employment of more than the **3.0** percent limitation include: activation of a new facility, implementation of Area Mail Processing or the anticipated increases in mail volume that impact certain facilities for specified and limited periods of time.

It is also recognized and agreed that the parties will meet and discuss the circumstances requiring casual employment in excess of the **3.0** percent

limitation by installation as far in advance as practicable, and mutually agree as to the appropriate resolution.

In circumstances meeting the conditions outlined in this Letter of Intent, the parties at the national level, and only at the national level, may agree to the employment of casuals above the **3.0%** limitation in an installation. Note that this provision does not apply to the two (2) casual exception periods during each fiscal year in which management may exceed the **3.0%** limitation in an installation, as outlined in Section 7.1B and discussed above.

## LETTER OF INTENT

### USPS INSTALLATIONS

The parties agree that reports provided to the Union pursuant to the Letter of Intent on Casuals - Accounting Period Report will include all installations, including those listed on the predecessor report (AAW990P1) provided to the Union during FY 98. If no career mail handlers and no mail handler casuals are employed in an installation, no report is required.

The parties further agree that the Employer retains the right to add installations, consolidate installations, and discontinue installations in accordance with Article 12, and the referenced reports will be adjusted to reflect such changes as soon as reasonably practicable thereafter. An installation for the purposes of this paragraph will be defined to include all facilities for which a mail handler career employee is entitled to bid, as provided under Article 12.3C.

Installations are defined to include all facilities for which a mail handler career employee is entitled to bid. Reports are not required for installations that do not have a career or casual mail handlers on the rolls.

## LETTER OF INTENT

### INSTALLATION MEASUREMENT OF CASUALS

**The Award establishes that the number of mail handler casual employees that may be hired at any one installation will be limited to 3.0% of the total number of career employees at that installation. The Employer may employ mail handler casual employees in any installation which employs more than four mail handler career employees.**

**For purposes of determining the correct number of mail handler casuals on an installation basis for installations with fewer than 100 career mail handlers, the chart below governs:**

<b>Career Mail Handlers In Installation</b>	<b>Number of Casuals Allowed</b>
<b>5 – 49</b>	<b>1</b>
<b>50 - 83</b>	<b>2</b>
<b>84 - 99</b>	<b>3</b>

**LETTER OF INTENT**

**MAIL HANDLER ASSISTANTS IN EXCESS OF PERCENTAGE CAPS**

The parties acknowledge that there may be situations of limited duration that occur during the course of the year when the Employer needs to employ MHAs in excess of the cap for the total number of MHAs within a District or the cap for the total number of MHAs in an installation.

Any local or Area/Regional agreements to allow the employment of MHAs in excess of the percentage cap requires concurrence by the parties at the National level.

This Letter of Intent requires that any agreements reached locally or regionally to exceed the MHA cap otherwise in effect must be reviewed and approved by both parties at the National level.

**MEMORANDUM OF UNDERSTANDING**

**CROSS CRAFT**

It is understood by the parties that in applying the provisions of Articles 7, 12 and 13 of this Agreement, cross craft assignments of employees, on both a temporary and permanent basis, shall continue as they were made among the six crafts under the 1978 National Agreement.

This Memorandum of Understanding provides that the crossing of craft lines applies only to those crafts which jointly negotiated the 1978 National Agreement; i.e., mail handler, clerk, motor vehicle, maintenance and letter carrier. Cross craft assignments may be made between those crafts in keeping with the provisions of Section 7.2. Rural carriers are not included.

John F. Hegarty  
National President

National Postal Mail Handlers Union  
1101 Connecticut Avenue NW Suite 500  
Washington, DC 20036-4304

Dear Mr. Hegarty:

During negotiation of the 2006 National Agreement, we agreed to the following:

Article 7.1: Changes to Management Operating Data System (MODS) designations will not be relied upon to diminish management's requirements to provide information under Section 7.1B and the Letter of Intent re: PSDS-Operation Numbers Accounting Period Report or to affect changes in existing jurisdictional determinations.

Article 7.2 C, D: For purposes of Section 7.2C and D only, the parties agree that management may assign work between wage levels within the Mail Handler craft. When such action is taken, management will comply with the provisions of Article 25.

Article 7.2 A, D: The term "occupational group" does not apply when making assignments within the mail handler craft under the terms of this contract language.

The parties further agreed that these understandings would be incorporated into the CIM subsequent to negotiations.

Valerie E. Martin  
Manager, Contract Administration NPMHU  
U.S. Postal Service

The paragraph relating to Section 7.1 confirms that changes to MODS numbers will not be relied upon to diminish management's requirements to provide information under Section 7.1B and the cited Letter of Intent or to affect changes in existing jurisdictional determinations. The paragraph relating to Section 7.2 C and D confirms that management may assign work between wage levels when making assignments within the mail handler craft so long as the terms of Article 25 are complied with. The paragraph relating to Section 7.2 A and D confirms that the term "occupational group" does not apply when making assignments within the mail handler craft under those provisions.

**Question: Is there a prohibition on cross wage level assignments (either from Level 4 to Level 5 or from Level 5 to Level 4) within the mail handler craft?**

**Answer: No. Cross wage level assignments within the mail handler craft are not prohibited.**

**Source: National Arbitration Award, C90C-1C-C 93018526, Arbitrator S. Das, dated September 7, 2004.**

## **MEMORANDUM OF UNDERSTANDING**

### **PART-TIME REGULARS**

The parties hereby agree that the United States Postal Service will not hire or assign part-time regular Mail Handlers in lieu of or to the detriment of full-time regular or part-time flexible Mail Handlers. As a result of this agreement, it is not the intention of the United States Postal Service for their managers to modify their current scheduling policies and practices concerning bargaining unit employees, especially part-time flexible Mail Handlers. Part-time regular Mail Handlers are to be hired and given work assignments based on operational needs, such as meeting fluctuations in mail volume and mail flow, service delivery standards, and other operational deadlines, to accomplish work requirements.

It is understood that this agreement in no way requires the United States Postal Service to guarantee a specific or minimum number of work hours in a service week to part-time flexible Mail Handlers. In addition, this agreement does not require the United States Postal Service to guarantee a specific or minimum number of part-time flexible or full-time regular Mail Handler positions in particular installations or nationwide.

The parties further agree to establish a joint National study committee, to be composed of an equal number of members from each party, to explore issues and conditions created by the hiring and assignment of part-time regular Mail Handlers as a result of the modification of Article 7.3 with respect to the part-time regular category. This committee will study assignment practices and will periodically review the effects of the modification of Article 7.3 with respect to the part-time regular category on the Mail Handlers bargaining unit.

In addition to the language in Section 7.3 dealing with the allowable percentage of part-time regulars, this Memorandum of Understanding outlines the agreement that part-time regulars will not be hired in lieu of or to the detriment of full-time regulars or part-time flexibles. At the same time, this MOU does not guarantee part-time flexibles a specific or minimum number of work hours within a service week, nor does it guarantee a specific or minimum number of part-time flexible or full-time regular positions within a particular installation or nationwide.

Management is able to reduce a part-time regular's scheduled hours of work on a permanent basis after hiring.

Source: National Arbitration Award H8T-2F-C 6605, Arbitrator R. Mittenthal, dated July 9, 1982.

However, the parties have agreed that part-time regulars are to be regularly scheduled during specific hours of duty and that their hours will be expanded beyond their fixed schedules only in emergency or unanticipated circumstances. Additionally, when it is necessary to permanently change their days of work or starting times, the provisions of Article 12 (Sections 12.3B4 and B6) will be applied.

Source: Memorandum of Understanding, dated September 22, 1988.

## **MEMORANDUM OF UNDERSTANDING**

### **CONVERSION OF MAIL HANDLER CRAFT EMPLOYEES**

It is hereby agreed by the United States Postal Service and the National Postal Mail Handlers Union, a Division of the Laborers' International Union of North America, AFL-CIO, that the following procedures regarding the conversion of Mail Handler Craft employees will be followed:

Mail Handler Craft employees may provide written notice to local management indicating a desire to convert from a part-time regular schedule to a part-time flexible schedule; or a part-time flexible schedule to a part-time regular schedule; or a full-time regular schedule to a part-time regular schedule. The request will be filed in the employee's Official Personnel Folder (OPF). A copy will be provided to the personnel office for tracking purposes.

Prior to filling any residual Mail Handler Craft vacancy, management will select from requests for conversion before hiring new employees or selecting employees not in the Mail Handler Craft or employees from other postal installations. Management has the right to reject the next eligible senior employee but must show cause for doing so, and any such action is grievable by said employee.

Requests must be on file prior to the date of the vacancy.

If management receives more than one request to convert to a particular job category, the employee's seniority date from his/her current seniority roster shall be used to break any ties.

Each employee is permitted one opportunity to decline an offer. If an employee declines a second offer, no further consideration will be given during the life of the contract. Declinations must be submitted in writing and filed in the employee's OPF.

Employees converting to a part-time regular schedule or to a part-time flexible schedule will begin a new period of seniority.

All employees must meet the qualification standards established for the vacancy.

The Memorandum of Understanding applies to certain changes between the full-time, part-time regular and part-time flexible categories within a particular installation.

## ARTICLE 8 HOURS OF WORK

### Section 8.1 Work Week

The work week for full-time regulars shall be forty (40) hours per week, eight (8) hours per day within ten (10) consecutive hours, provided, however, that in all offices with more than 100 full-time employees in the bargaining units the normal work week for full-time regular employees will be forty hours per week, eight hours per day within nine (9) consecutive hours. Shorter work weeks will, however, exist as needed for part-time regulars.

### Section 8.2 Work Schedules

- A The employee's service week shall be a calendar week beginning at 12:01 a.m. Saturday and ending at 12 midnight the following Friday.
- B The employee's service day is the calendar day on which the majority of work is scheduled. Where the work schedule is distributed evenly over two calendar days, the service day is the calendar day on which such work schedule begins.
- C The employee's normal work week is five (5) service days, each consisting of eight (8) hours, within ten (10) consecutive hours, except as provided in Section 8.1 of this Article. As far as practicable the five days shall be consecutive days within the service week.

**Service Week:** Section 8.2A defines the “service week” of bargaining-unit employees as the calendar week beginning at 12:01 a.m. Saturday and ending at 12 midnight the following Friday. Defining the service week enables the parties to make and enforce rules about weekly hours guarantees, limits on weekly work hours, overtime paid for work over a certain number of hours during a service week, etc.

The service week is not necessarily the same as a “week” for vacation planning purposes; see Article 10, Section .3E and Article 30, Section .2, Item E. The “FLSA work week” also has a different definition; see the explanation under Section 8.4.

**Service Day:** Section 8.2B defines the “service day” for pay and overtime purposes. This definition is important for mail handlers who are scheduled to work past midnight into another calendar day. The service day is defined as the calendar day on which the majority of work is scheduled. Where the work schedule is distributed evenly over two calendar days, the service day is the calendar day on which such work schedule begins.

**Schedules of full-time employees:** Taken together, Sections 8.1 and 8.2C provide that the work week for all full-time regular mail handlers (including unassigned regulars) consists of five service days, each consisting of eight (8) hours per day within ten (10) consecutive hours, and forty (40) hours per week. Additionally, in all offices with more than 100 full-time employees in the bargaining units the eight (8) hours per day must be within nine (9) consecutive hours.

**Days off:** The schedule of a full-time regular employee shall include fixed days off. Section 8.2C provides that as far as practicable the five (5) days shall be consecutive days within the service week.

**Five minute leeway rule:** Regardless of exactly what an employee's regular schedule is, there is the question of whether the Postal Service is compensating the employee for all time worked at either the straight-time or the overtime rate, whichever is applicable. This issue often arises in regard to the "5-minute leeway rule," which is contained in both the F-21 and F-22 Handbooks and is incorporated into the National Agreement through the provisions of Article 19. This rule applies to full-time and part-time regular employees. (It should be noted that part-time flexible employees and casuals are allowed the five-minute privilege for clocking purposes but are paid on the basis of their actual clock rings.) The Postal Service compensates the employee for *all time worked* at either the straight-time or the overtime rate, whichever is applicable. The five-minute leeway rule provides that each employee at installations with time recording devices is required to clock in and clock out on time. However, congestion at time clocks or other conditions can sometimes cause clock time to vary slightly from the established work schedule. Therefore, a deviation may be allowed from the scheduled time for each clock ring up to 0.08 hours (5 minutes) and the time should be adjusted for the conditions stated above. Once an employee's time on the clock exceeds the employee's established work schedule for that day by more than five minutes, the total time for that day becomes payable time. In an effort to avoid additional costs and administrative burdens, the Postal Service tries to insure that an employee does not accumulate a daily total of more than five minutes of clock time in excess of the employee's scheduled work time unless, of course, the employee is assigned to work overtime. See Employee and Labor Relations Manual (ELM), Section 432.46.

**Question:** What is the work week for full-time regulars?

**Answer:** The work week for full-time regular employees is 40 hours per week, eight hours within ten consecutive hours, for smaller offices. For offices with more than 100 full-time bargaining-unit employees, the eight-hour workday must fall within nine consecutive hours.

**Question:** How is it determined whether an installation has more than 100 full-time bargaining unit employees?

**Answer:** At the beginning of a new collective bargaining agreement, the number of full-time employees in the bargaining units represented by the NPMHU, APWU and NALC are added together to determine whether there are more than 100 full-time employees in the installation.

**Question:** What is an employee's service week?

**Answer:** An employee's service week is the calendar week beginning at 12:01 a.m. Saturday and ending at 12:00 midnight the following Friday.

**Question:** What is the determining factor for establishing an employee's service day?

**Answer:** The service day is the calendar day on which the majority of the employee's work is scheduled. If the work schedule is evenly distributed over two calendar days, the service day is the day on which that employee's work schedule begins.

**Question:** What is the schedule of an employee who is converted to full-time status or otherwise becomes an unassigned regular?

**Answer:** If not assigned to a residual vacancy, an employee who is converted to full-time status or otherwise becomes an unassigned regular assumes as his/her regular work schedule the hours worked in the first week of the pay period in which the change to unassigned regular occurs. This schedule can only be changed by: the employee becoming a successful bidder under Article 12; the employee being assigned to a residual vacancy under Article 12; the employee making a voluntary request for a temporary change in schedule; or in keeping with the terms of Chapter 4, Section 434.6 of the Employee and Labor Relations Manual (ELM). See further the discussion under Section 8.4B.

**Source:** National Arbitration Award H1C-5F-C 1004/1007, Arbitrator H. Gamser, dated September 10, 1982; Employee and Labor Relations Manual (ELM) Chapter 4, Section 434.

**Question:** Can a full-time regular have a lunch period of longer than 30 minutes duration?

**Answer:** In accordance with the provisions of Article 12, duty assignments may be established or permanently changed to include a lunch period of 30 minutes or longer, provided there is no conflict with the provisions of Section 8.1 requiring eight hours within nine or ten consecutive hours, depending on the size of the office. Otherwise, the lunch period can be extended only as a result of a voluntary temporary schedule change request or in keeping with the provisions of Chapter 4, Section 434.6 of the ELM.

### **Section 8.3 Exceptions**

Section 8.2C above shall not apply to part-time employees.

Part-time employees will be scheduled in accordance with the above rules, except they may be scheduled for less than eight (8) hours per service day and less than forty (40) hours per normal work week.

MHAs will be scheduled in accordance with Section 2, A and B of this Article.

**Work schedules of part-time employees:** Section 8.3 makes clear that the normal work week defined by Section 8.2C above applies only to full-time employees and not part-time flexible, part-time regular employees, **or MHAs** who have no daily eight (8) hour or weekly (40 hour) guarantees. Moreover, the language in Article 7 (Section .1A2) which provides that part-time flexible employees "shall be available to work flexible hours as assigned by the Employer during the course of a service week," means that part-time flexible employees may be scheduled to work more or less than five (5) days per week and more or less than eight (8) hours per day.

Part-time flexible employees are not required to "stand-by" or remain at home for a call-in or to call the facility in order to determine whether or not their services are needed on a day when they have not been scheduled for duty. Local management should attempt to schedule part-time flexible employees in advance wherever possible. Should a supervisor be unable to contact an employee whose services are needed, the employee merely remains nonscheduled for that day.

Source: Step 4 Grievances NC-W-9013, dated November 25, 1977 and H8N-4B-C 26754/24748, dated September 30, 1982.

Except in emergency situations as determined by the Postmaster General (or designee), part-time flexible employees may not be required to work more than 12 hours in one service day. In addition, total hours of daily service, including scheduled work hours, overtime, and mealtime, may not be extended over a period longer than 12 consecutive hours.

Source: ELM Chapter 4, Section 432.32; Step 4 Grievances H4C-2U-C 807/1396, dated April 22, 1985.

**Question: Is there a limit on the number of hours that MHAs may be required to work on a work day?**

**Answer: Yes, MHAs are covered by Section 432.32 of the Employee and Labor Relations Manual, which states:**

***“Except as designated in labor agreements for bargaining unit employees or in emergency situations as determined by the PMG (or designee), employees may not be required to work more than 12 hours in 1 service day. In addition, the total hours of daily service, including scheduled work hours, overtime, and mealtime, may not be extended over a period longer than 12 consecutive hours. Postmasters, Postal Inspectors, and exempt employees are excluded from these provisions.”***

The reference to scheduling part-time employees “in accordance with the above rules,” as it relates to regular work schedules, applies only to part-time regular employees.

Source: Memorandum of Interpretation, dated November 4, 1971.

Part-time regulars are assigned to regular schedules, with specific hours of duty, consisting of less than eight (8) hours in a service day and less than forty (40) hours in a service week. Regardless of the hours of their regular schedule, they do not earn overtime until they work more than eight (8) hours in a day or more than forty (40) hours in a week and they are not entitled to out-of-schedule premium.

**Question:** Can part-time regular employees be assigned a regular schedule consisting of eight hours in a day and 40 hours in a week?

**Answer:** No. Part-time regulars are assigned a regular schedule consisting of less than eight hours in a day and less than 40 hours in a week.

The scheduled hours of a part-time regular may be permanently changed, in accordance with operational needs.

Source: National Arbitration Award H8T-2F-C 6605, Arbitrator R. Mittenthal, dated July 9, 1982.

Unless expanding or reducing the scheduled hours of a part-time regular also involves a change in starting time greater than one hour or a change in the scheduled days of work, there is no requirement to post the duty assignment as a result of such change.

**Question:** Can the hours of part-time regular employees be expanded on a temporary or day-to-day basis?

**Answer:** Part-time regular hours may be temporarily expanded beyond their fixed schedules only in emergency or unanticipated circumstances.

Source: Pre-arbitration Settlement H4M-5L-C 15002, et al. and Memorandum of Understanding, dated September 22, 1988.

**Question:** How may the scheduled day(s) off and/or starting times of a part-time regular assignment be changed?

**Answer:** When it is necessary that the fixed scheduled day(s) of work or the starting times for a part-time regular assignment be permanently changed, the provisions of Article 12 (Sections 3.B4 and 3.B6) will be followed.

Source: Memorandum of Understanding, dated September 22, 1988.

#### **Section 8.4 Overtime Work**

- A Overtime pay is to be paid at the rate of one and one-half (1 1/2) times the base hourly straight time rate.
- B Overtime shall be paid to employees for work performed only after eight (8) hours on duty in any one service day or forty (40) hours in any one service week. Nothing in this Section shall be construed by the parties or any reviewing authority to deny the payment of overtime to employees for time worked outside of their regularly scheduled work week at the request of the Employer.

**Postal overtime:** All career bargaining unit employees are paid postal overtime for time spent in a pay status in excess of eight (8) hours in a service day and/or in excess of forty (40) hours in a service week. Hours "in a pay status" include hours of actual work and hours of paid leave.

Question: Are casuals entitled to Postal overtime?

Response: No. Casuals are paid FLSA overtime for work performed beyond forty (40) hours in a service week.

Source: ELM Chapter 4, Exhibit 434.141b.

**Postal overtime pay rate:** The contractual overtime rate of pay is one and one-half (1 ½) times the base straight-time hourly rate. The overtime rate for part-time flexible employees is the same as the overtime rate for full-time regular employees in the same step and grade. While this rate is slightly less than one and one-half (1 ½) times the part-time flexible base straight-time hourly rate, it is a consequence of part-time flexible employees receiving a slightly higher regular straight-time hourly rate than full-time regulars in order to compensate them for not receiving paid holidays. (See Article 11, Section 11.7)

Source: Step 4 Grievances H4M-4J-C 12563, dated August 3, 1990, and NC-C-8760, dated December 21, 1977 (**cited in Step 4 Grievance A00M-1A-C 05094042, dated March 14, 2014**).

**FLSA overtime:** Totally independent of the contract are those provisions of the Fair Labor Standards Act governing overtime for all non-exempt employees who *actually work more than forty (40) hours* during the employee's FLSA work week. The *FLSA overtime rate* is one and one-half (1 ½) times the employee's "regular rate" of pay for all hours of actual work in excess of forty (40) hours in the FLSA work week. "Regular Rate" of pay is defined in the ELM as follows:

#### 443.21 **Regular Rate**

##### 443.211 **Definitions**

*An employee's regular rate of pay is defined as all remuneration for employment received during an FLSA workweek divided by the hours that the employee actually worked.*

##### 443.212 **Inclusions**

All remuneration for employment includes:

- a. Total base straight time pay, including COLA, for work performed.
- b. Total straight time pay differential for higher level work performed.
- c. Total TCOLA paid for hours actually worked.
- d. Total night differential paid.
- e. Total premium paid for work performed on a Sunday.
- f. Total base straight time pay, including COLA, for work performed on a holiday.
- g. Total base straight time pay, including COLA, of a city letter carrier covering those hours not worked between the seventh and eighth hour of a regular scheduled day (7:01 rule). See 432.53.
- h. Total pay received for steward's duty time, in accordance with the applicable collective-bargaining agreement.
- i. Total meeting and training time pay.

- j. Total pay for travel time.
- k. Total straight time pay during scheduled tour and/or scheduled overtime spent waiting for or receiving medical attention (see 432.72).
- l. Total pay for time that computer programmer and systems analyst employees are required to carry an electronic pager.

**443.213 Exclusions**

All remuneration for employment excludes:

- a. Pay for time not worked, such as annual leave, sick leave, holiday leave pay, guaranteed time not worked, etc.
- b. The 50 percent overtime pay premium for work in excess of 8 hours in a day or 40 hours in a week.
- c. The 100 percent premium paid for penalty overtime.
- d. The 50 percent premium paid for work outside of an employee's schedule or for emergency rescheduling.
- e. The 50 percent premium paid for work performed on Christmas day.
- f. TCOLA paid for leave hours and other time not worked.
- g. That portion of the higher level pay differential paid on leave hours and other time not worked.
- h. The 50 percent holiday scheduling premium paid under the provisions of the Holiday Settlement Agreement.
- i. That portion of the basic straight time pay of a part-time flexible employee paid in lieu of holiday leave pay.

**443.214 Exclusions Not Creditable**

The exclusions listed above in subsection 443.213(a), (f), (g), and (i) are not creditable toward FLSA overtime compensation that is due.

Because certain pay premiums are included in the calculation of the FLSA overtime rate, an employee may receive a higher rate of pay for FLSA overtime than for postal overtime.

**Out-of-Schedule Premium:** Section 8.4B refers to the out-of-schedule premium provisions contained in Section 434.6 of the ELM. Section 434.6 provides that out-of-schedule premium is paid at the postal overtime rate to eligible full-time bargaining unit employees for time worked outside of, and instead of, their regularly scheduled work day or work week when employees work on a temporary schedule at the request of management. Only full-time employees may receive out-of-schedule pay.

However, an employee does not receive out-of-schedule pay when the employee's schedule is changed to provide limited or light duty, when the employee is attending a recognized training session that is a planned, prepared, and coordinated program or course, when the employee is allowed to make up time due to tardiness in reporting for duty, or when the assignment is made to accommodate a request for intermittent leave or a reduced work schedule for family care or the serious health problem of the employee. Further exceptions are outlined in ELM Chapter 4, Section 434.622.

In a National Award, Arbitrator Gamser ruled that the exclusion of limited or light duty assignments from the requirement to pay out-of-schedule premium does not give management the unbridled right to make such an out-of-schedule assignment when the disabled employee could be offered a work opportunity during the hours of his or her regular tour.

Source: National Arbitration Award N8-NA-0003, Arbitrator H. Gamser, dated March 12, 1980.

**Rules for out-of-schedule:** Out-of-schedule premium provisions *are applicable only in cases where management has given advance notice* of the change of schedule by Wednesday of the preceding service week. In all other cases a full time-employee is entitled to work the hours of his or her regular schedule or receive pay in lieu thereof; the regular overtime rules apply, not the out-of-schedule premium rules.

- If notice of a temporary change is given to an employee by Wednesday of the preceding service week, even if this change is revised later, management has the right to limit the employee's work hours to the hours of the revised schedule and out-of-schedule premium is paid for those hours worked outside of, and instead of, his or her regular schedule.
- If notice of a temporary schedule change is *not* given to the employee by Wednesday of the preceding service week, the employee is entitled to work his/her regular schedule or receive pay in-lieu thereof, and the out-of-

schedule provisions do not apply. In this case any hours worked in addition to the employee’s regular schedule are not considered out-of-schedule premium hours. Instead, they are paid as overtime hours worked in excess of eight (8) hours per service day or forty (40) hours per service week.

Out-of-schedule premium hours cannot exceed the unworked portion of the employee’s regular schedule. If employees work their full regular schedule, then any additional hours worked are not instead of their regular schedule and are not considered as out-of-schedule premium hours. Any hours worked which result in paid hours in excess of eight (8) hours per service day or forty (40) hours per service week are paid at the overtime rate.

**Out-of-Schedule Premium – Daily Schedule Examples**

Example Number	Hours Worked	Total Hours Worked	Out-of-Schedule Premium Hours	Straight Time Hours	Overtime Hours
1*	8:00 am-4:30pm	8	0	8	0
2	6:00 am-2:30pm	8	2	6	0
3	6:00 am-3:30pm	9	1	7	1
4	6:00 am-4:30pm	10	0	8	2

\* Original, Permanent schedule

The following examples, which refer to the chart above, illustrate the out-of-schedule premium rules.

- **Example 1.** This is the employee’s original, permanent schedule of 8:00 a.m.-4:30 p.m. for an eight (8) hour workday. The employee receives eight (8) hours of straight-time pay.
- **Example 2.** For examples 2 through 4, the employee has received advance notice by Wednesday of the preceding service week of a schedule change to 6:00 a.m.-2:30 p.m. In Example 2, the employee works the revised schedule’s hours only, and receives two hours of out-of-schedule premium for the hours 6:00 a.m.-8:00 a.m., which were worked outside of and instead of the regular schedule.
- **Example 3.** The employee works the revised schedule plus one (1) additional hour. The employee receives one (1) hour of out-of-schedule premium pay, because of time worked outside of and instead of his or her regular schedule. However, out-of-schedule premium hours cannot exceed

the unworked hours of the employee's permanent schedule (there is only one such hour here), so the extra work hour is paid as contract overtime rather than out-of-schedule premium.

- **Example 4.** In this example, the employee works the revised schedule plus two hours of overtime. Two (2) hours of postal overtime are paid but no out-of-schedule premium, because the employee has worked his or her full, permanent schedule.

**Weekly schedule example:** The out-of-schedule premium also applies to scheduled days as well as scheduled workhours. For example, an employee's regular schedule is Monday through Friday and the employee is given timely notice of a temporary schedule change to Sunday through Thursday with the same daily work hours. The employee works eight (8) hours per day Sunday through Thursday. The hours worked on Sunday are out-of-schedule premium hours provided they are worked instead of the employee's regularly scheduled hours on Friday. However, if the employee also works their regular schedule on Friday, then there can be no out-of-schedule premium hours. The employee is paid overtime for the hours worked in excess of forty (40) during the service week.

**Voluntary schedule changes:** There may be situations in which full-time employees wish to have their regular schedules temporarily changed for their *own* convenience. Management need not pay out-of-schedule premium when a change in a full-time employee's schedule meets *all three* of the following criteria:

1. The requested change in schedule is for the personal convenience of the employee, not for the convenience of management. Note: Arbitrator H. Gamser held in National Arbitration Award AB-C 341, dated July 27, 1975, that management could not be relieved of the obligation to pay out-of-schedule premium by informing employee who volunteered for higher level assignments that such assignments would be considered to be "at the request of the employee."
2. The employee has signed a PS Form 3189, *Request for Temporary Schedule Change for Personal Convenience*.
3. Management and the employee's shop steward or other union representative agree to the change and both sign the Form 3189.

**Question:** Can management temporarily change the work schedule of an unassigned regular employee?

**Answer:** Yes. But unless the change was due to the conditions outlined in ELM Chapter 4, Section 434.622, the employee would receive out-of-schedule premium.

**Question:** Is management required to give the unassigned regular employee advance notice of the temporary schedule change?

**Answer:** Yes. In keeping with ELM Chapter 4, Section 434.612, notice must be given to full-time employees by the Wednesday of the preceding service week. If such notice is not given, the full-time employees are entitled to work their regular schedules. Any hours worked in addition to those schedules are not worked "instead of" those regularly scheduled hours and would, therefore, be paid as overtime hours worked.

Source: National Arbitration Award H1C-5F-C 1004/1007, Arbitrator H. Gamser, dated September 10, 1982; ELM Chapter 4, Section 434.612.

Additionally, an employee whose service as an acting supervisor (204b) involves working a schedule different from his/her regular work schedule is entitled to out-of-schedule premium during the period of the detail as temporary supervisor.

Source: National Arbitration Award A8-W-939, et al., Arbitrator R. Mittenthal, dated January 27, 1982.

**C** Wherever two or more overtime or premium rates may appear applicable to the same hour or hours worked by an employee, there shall be no pyramiding or adding together of such overtime or premium rates and only the higher of the employee's applicable rates shall apply.

Because Section 8.4C prohibits the "pyramiding" or adding together of overtime and premium rates, it generally results in a "ceiling" on contract overtime of one and one-half (1 ½) times the employee's basic rate, the overtime rate, which is the highest premium pay rate. However, night-shift differential (Section 8.7) is added to overtime premium rates because the night-shift differential is not a "premium" for the purpose of this section. See further the table in ELM Chapter 4, Section 434.8 regarding the pyramiding of premiums.

**D** The parties to this Agreement recognize that sustained and excessive levels of overtime, particularly where it is being worked by non-volunteers, are not ultimately beneficial to the Postal Service or the employees. The subject of sustained and excessive overtime, where it is being worked by non-volunteers, is a proper topic for discussion at Local and Regional/Area Labor Management Committee meetings. The parties will meet to discuss particular problem areas and to identify appropriate avenues of resolution. In addition, any disputes on this subject may be processed through the Grievance-Arbitration procedure in accordance with Article 15.

See the provisions of Article 38 for a discussion of scheduling Labor-Management Committee meetings.

**E Overtime Work for MHAs**

MHAs shall be paid overtime for work performed in excess of forty (40) work hours in any one service week. Overtime pay for MHAs is to be paid at the rate of one and one-half (1-1/2) times the basic hourly straight time rate.

When an opportunity exists for overtime for qualified and available full-time employees, doing similar work in the work location where the employees regularly work, prior to utilizing an MHA in excess of eight (8) work hours in a service day or forty (40) hours in a service week, such qualified and available full-time employees on the appropriate Overtime Desired List will be selected to perform such work in order of their seniority on a rotating basis.

**Question: If an MHA used 8 hours of A/L on Saturday and worked 40 hours Sunday through Friday in the same week, would the MHA receive 8 hours of overtime pay?**

**Answer: No.**

**Question: Does the Fair Labor Standards Act consider leave hours as work hours for MHAs?**

**Answer: No.**

**Section 8.5 Overtime Assignments**

When needed, overtime work shall be scheduled among qualified full-time regular employees doing similar work in the work location where the employees regularly work in accordance with the following:

- A Two weeks (i.e., 14 calendar days) prior to the start of each calendar quarter, full-time regular employees desiring to work overtime during that quarter shall place their names on an "Overtime Desired" list. Every full-time regular employee shall have the opportunity to put his/her name on the "Overtime Desired" list, even though he/she may be on leave during the signing up period for that quarter.

Newly converted full-time employees **and employees converted, transferred, or reassigned into an installation or into the Mail Handler craft within the installation**, may place their names on the "Overtime Desired" list within the two weeks (i.e., 14 calendar days) following the date upon which they are converted, **transferred, or**

**reassigned** to full-time. Said placement on the list shall be effective on the next calendar day.

Employees on the “Overtime Desired” list from the previous quarter shall have their names automatically placed on the list for the next quarter, and their names shall remain on the list unless they provide the Employer with written notice of their desire to remove their names from the list.

The first opportunity for all overtime goes to full-time regulars who have signed the Overtime Desired List (OTDL). Overtime is assigned to available, qualified employees on the OTDL prior to using part-time flexibles or casuals on overtime.

Only full-time regular employees may sign the OTDL. Part-time regular, part-time flexible, casual employees, **and MHAs** are excluded from signing the OTDL. However, whenever an employee is converted **to full-time, or transferred or reassigned into an installation or into the Mail Handler craft within an installation**, that employee has a one-time opportunity to add his/her name to the OTDL for a period of fourteen (14) calendar days following the date on which he/she was converted, **transferred, or reassigned**.

Employees wishing to remain on the “Overtime Desired” list do not have to sign the list every quarter. Once an employee’s name is on the list, it remains on the list until the employee takes action, in writing, to remove it. If that request to remove his/her name is made during other than the two-week sign-up period, the procedures in the fourth Q & A hereunder continue to apply. If the employee thereafter decided to place his/her name back on the “Overtime Desired” list, he/she would need to sign the list during the two weeks prior to the start of a subsequent calendar quarter.

**Question:** Is an employee who is on light or limited duty permitted to sign the OTDL?

**Answer:** Yes. The employee will be selected within the normal rotation so long as the work needed falls within his/her medical restrictions. For example, an employee with restrictions of “no lifting over five pounds” would normally not be eligible for overtime work on the outbound docks.

Source: Letter to All Affected Representatives, September, 1987, and Step 4 Grievance H4N-5B-C 9731, dated July 11, 1986.

**Question:** Is an employee who has been on military leave permitted to sign the OTDL after the start of the calendar quarter?

**Answer:** Yes. A mail handler on military leave at the time when full-time employees places their names on the OTDL may place his/her name on the OTDL upon return to work.

Source: Step 4 Grievance H4N-1K-C 41588, dated April 8, 1988.

**Question:** When a mail handler bids during a calendar quarter to a duty assignment on a different tour, may he/she sign the OTDL for the gaining tour?

**Answer:** Yes, if the mail handler was on the OTDL for the losing tour and the Local Memorandum of Understanding does not provide otherwise.

Source: Step 4 Grievances H1C-1E-C 41245/42949, dated August 7, 1985.

**Question:** Under what circumstances is a mail handler allowed to remove his/her name from the OTDL during the course of a calendar quarter?

**Answer:** The mail handler's request to have his/her name removed from the OTDL should be honored provided that the request is made prior to the date on which the scheduling of overtime that the employee would otherwise be required to work occurs. Furthermore, that employee cannot subsequently place his/her name back on the OTDL for the remainder of that calendar quarter.

Source: Letters NPMHU to USPS, dated May 30, 1989, and USPS to NPMHU, dated June 20, 1989.

**Question:** May management unilaterally remove an employee's name from the OTDL if the employee refuses to work overtime when requested?

**Answer:** No. However, employees on the OTDL are required to work overtime except as provided for in Section 8.5E.

Source: Pre-arbitration Settlement H4N-5K-C 4489, dated September 13, 1988.

**B** Lists will be established by section and/or tour in accordance with Article 30, Local Implementation.

The subject of whether the OTDL is established "by section and/or tour" may be addressed pursuant to the provisions of Article 30 (Section 30.2, Item L.) One of three alternatives may be selected during local implementation:

By section within a tour; or

By tour; or

By section within a tour, and tour.

Note that if the last alternative is selected, management has the right to select employees on the section OTDL who have volunteered to work beyond twelve (12) hours prior to selecting employees from the tour OTDL.

Source: Pre-arbitration Settlement H4M-NA-C 75, dated December 4, 1987.

C When during the quarter the need for overtime arises, full-time regular employees with the necessary skills having listed their names will be selected in order of their seniority on a rotating basis. Those absent, or on leave shall be passed over. In addition, employees whose guarantee exceeds the overtime requirement shall be passed over (e.g., an employee on a nonscheduled day would not be called in to perform 2 hours of overtime work); unless such guarantee is modified by the provisions of Section 8.8 concerning early release. Full-time regular employees on the "Overtime Desired" list may be required to work up to twelve (12) hours in a day. In addition, at the discretion of the Employer, "Overtime Desired" list employees may volunteer to work beyond twelve (12) hours in a day.

When management determines that overtime is needed, the first opportunity for such overtime goes to qualified and available employees possessing the necessary skills who have signed the OTDL. Although not all inclusive, the following examples may be useful in understanding the intent of the parties:

1. 20 mail handlers are needed for two hours overtime, from 3:00 p.m. to 5:00 p.m., at the end of Tour II at the BMC. Only ten mail handlers have signed the OTDL and all are available and qualified for the needed work. Under this circumstance, management must assign the ten mail handlers on the OTDL and then may assign ten mail handlers not on the list. If management determines that an additional two hours of overtime for ten mail handlers is needed, from 5:00 p.m. to 7:00 p.m., the ten mail handlers from the OTDL who are working must be assigned that additional overtime. This will not be considered an additional overtime opportunity within the rotation outlined in Section 8.5C.
2. The P&DC has multiple ending times on Tour II; e.g., 3:00 p.m. and 4:00 p.m. 20 mail handlers are needed for two hours overtime at 3:00 p.m. Again, ten available and qualified mail handlers are on the OTDL and management selects an additional ten mail handlers not on the list. At 4:00 p.m., ten more qualified mail handlers on the OTDL become available at the end of their tour. These ten OTDL mail handlers would be kept for one hour of overtime, from 4:00 p.m. to 5:00 p.m., and the ten mail handlers not on the OTDL would be released.

Source: Letter to All Affected Representatives, September, 1987.

The OTDL is applied on a rotational basis, beginning each calendar quarter. Where the employee's guarantee (see Section 8.8) exceeds the amount of overtime required, the employee may, with the concurrence of the union and the approval of management, waive that guarantee.

Employees on the OTDL are considered to be "available" for overtime if they are on duty at the time that the selection of employees for overtime is made, and if they are eligible to work overtime during the time period in which the overtime work is needed; those absent or on leave are passed over. Note that exceptions to this rule may occur only where provided for in the Local Memorandum of Understanding, in other local agreements, or by past practice.

Source: Step 4 Grievance H7M-4A-C 488/489, dated April 8, 1988.

Normally, employees who are absent or on leave are not required or considered available to work overtime. However, if employees on the OTDL so desire, they may advise their supervisor in writing of their availability to work a nonscheduled day that is in conjunction with or part of a period of approved leave.

Source: Step 4 Grievance B90M-1B-C 95062381, dated October 15, 1997.

The Memorandum of Understanding Improper By-Pass Overtime, reprinted **at the end of this Article**, provides procedures for the settlement of disputes regarding situations in which an employee on the OTDL is bypassed for either another employee on the OTDL or for an employee not on the OTDL.

Employees signing the OTDL may be required to work up to twelve (12) hours in a service day and up to seven (7) days in a service week. Additionally, they may volunteer to work beyond twelve (12) hours in a day. Scheduling of overtime beyond 12 hours should be administered in keeping with the seniority principles of Section 8.5C and in a non-discriminatory manner. A volunteer who works beyond 12 hours is not considered to have exercised another opportunity within the OTDL rotation.

Source: Letter to All Affected Representatives, dated September, 1987; Step 4 Grievance H7M-1F-C 20892, dated January 24, 1990; Pre-arbitration Settlement B90M-1B-C 95006557, dated August 14, 1998.

**Question:** Is the OTDL used for holiday scheduling?

**Answer:** No. The OTDL is not used when preparing the holiday schedule required by Article 11 (Section 11.6.) If the need for additional full-time employees to work the holiday is determined subsequent to the posting of the holiday schedule, recourse to the OTDL would be appropriate.

Source: National Arbitration Award H8C-5D-C 14577, Arbitrator R. Mittenthal, dated April 15, 1983.

**Question:** Is an employee entitled to work their duty assignment when called in to work on their nonscheduled day?

**Answer:** No. There is no entitlement of an employee to work their duty assignment on a day which is not one of the five (5) regular work days specified for that particular duty assignment, unless currently-existing language in the Local Memorandum of Understanding provides otherwise.

Source: Step 4 Grievance A8-N-0003, dated July 19, 1978.

One purpose of the OTDL is to excuse full-time employees not wishing to work overtime from having to work overtime. However, if the OTDL does not provide sufficient qualified full-time regulars for required overtime, then the provisions of Section 8.5D, discussed below, permit management to require other employees to work overtime to the extent needed.

D If the voluntary "Overtime Desired" list does not provide sufficient available and qualified people, the Employer shall assign other employees to the extent needed. When assigning such employees, the Employer shall first utilize qualified and available full-time employees, in order of seniority, who have volunteered to work the required overtime after their scheduled tour for that day only or who have volunteered to work their nonscheduled day(s). Employees shall volunteer for overtime assignments after their scheduled tour for that day only by signing their name and indicating their seniority date, within the first two (2) hours of their scheduled tour of duty, on a daily "Full-Time Volunteer" list maintained in each work section on the workroom floor. The daily "Full-Time Volunteer" list shall be applied in a manner consistent with the application of the "Overtime Desired" list within the installation. Employees shall volunteer for overtime assignments on their nonscheduled days by signing their name and indicating their nonscheduled days and their seniority date on a Full-Time Volunteer list that is posted in each work section at the beginning of the service week (i.e., on Saturday) and must be signed by Tuesday of the service week prior to that being volunteered for. Such full-time employee volunteers shall work the required overtime, as directed by management. The Employer shall have the discretion to limit these volunteer employees from working beyond ten (10) hours in a day. There shall not be any penalty for errors by the Employer in applying either of these "Full-Time Volunteer" lists.

If additional employees are still needed after application of the above, the Employer shall assign other employees as needed. To the extent practicable, an effort will be made to schedule available **(on duty at the time that the selection of employees for overtime is made) casuals, Mail Handler Assistants, and/or part-time flexible employees** for such overtime work prior to requiring full-time employees not on the "Overtime Desired" list or "Full-Time Volunteer" lists to work such overtime. If qualified full-time regular employees not on the "Overtime Desired" list or either of the volunteer lists are required to work overtime, it shall be on a rotating basis with the first opportunity assigned to the junior employee.

If the OTDL does not provide sufficient employees to work the needed overtime, management may utilize other employees to accomplish the work needed within the "operational window." For example, if management determines that the need exists for 20 mail handlers to work two hours overtime and only ten are available from the OTDL, management may assign other mail handlers as required to meet the two-hour operational requirement.

In such cases, management must first utilize the Full-time Volunteer Lists (FTVL) posted in each section on the workroom floor.

Full-time regular employees who are not on the OTDL may sign the Daily FTVL during the first two (2) hours of their tour of duty on each scheduled work day. The Daily FTVL is utilized if the OTDL does not provide sufficient employees to work overtime after the tour of duty on a particular day. It does not carry over from one day to the next. The Daily FTVL is applied in the same fashion as the OTDL. If the OTDL is established by section, the Daily FTVL is applied by section. If the OTDL is established by section and tour, the Daily FTVL is first applied in each section and then merged to create a tour-wide list for that particular day.

The Nonscheduled Day (NSD) FTVL applies to overtime needed on an employee's nonscheduled day(s). Full-time regular employees not on the OTDL may sign the NSD FTVL by the Tuesday of the service week prior to that in which the overtime will be worked. (The sign-up sheet is posted in all work sections each Saturday.)

Employees who sign the FTVLs are required to work the overtime as directed by management. Employees are selected from the FTVLs in order of seniority, without any rotation. Such employees may be limited to working no more than ten (10) hours in a day. There is no penalty for errors in the application of either of the FTVLs.

If additional employees are needed to work the overtime after the FTVL is exhausted, management may assign other employees. Every effort should be made to first assign available and qualified **casuals, Mail Handler Assistants,**

**and/or** part-time flexible employees prior to assigning full-time regulars not on any of the lists.

Source: Letter to All Affected Representatives, dated September, 1987, and Step 4 Grievances H7M-4K-C 23326 et al., dated June 1, 1992.

**Qualified MHAs also should be included when assigning overtime prior to assigning full-time mail handlers who are not on the overtime desired lists.**

If management determines that it is necessary to assign full-time regular employees not on the OTDL or the FTVL, such employees shall be assigned on a rotating basis starting with the junior employee. The juniority rotation of employees not on the OTDL begins anew each calendar quarter, concurrent with the revisions to the OTDL.

Source: Pre-arbitration Settlement H1M-2F-C 18272, dated August 14, 1985.

E Exceptions to .5C and .5D above if requested by the employee may be approved by local management in exceptional cases based on equity (e.g., anniversaries, birthdays, illness, deaths).

This language is intended to serve as a guideline for local management when considering excusing individual employees from overtime work because of "exceptional" situations.

Consequently, the four examples listed in the parentheses are merely illustrative of the kinds of situations in which management should give full consideration to excusing an employee(s) from overtime. However, as Arbitrator Sylvester Garrett has held in National Award NC-C 7933, dated January 8, 1979, Section 8.5E "reflects an intent to confer relatively broad discretion on local management to excuse employees from overtime work for any one of a number of legitimate reasons 'based on equity'."

In denying a grievance which challenged the use of Form 3971 when an employee sought to be excused from scheduled overtime due to illness, Arbitrator R. Bloch ruled:

The use of the form in question in these particular circumstances does not fall squarely within the purpose for which the form was designed. From a purely technical standpoint, the employee is not requesting sick leave when he or she leaves, unexpectedly, from an overtime assignment. . . But neither may it be said that the use of the form for record keeping purposes is either unreasonable or prohibited by the labor agreement.

Source: National Arbitration Award H1M-3W-C 29228, Arbitrator R. Bloch, dated September 5, 1985.

F Excluding December, only in an emergency situation will a full-time regular employee not on the "Overtime Desired" list be required to work over ten (10) hours in a day or over six (6) days in a week.

[See Memos, pages 149-50]

The limitations set forth in this section apply to full-time regular employees who are not on the OTDL.

Source: Step 4 Grievance H4M-3U-C 6982, dated May 30, 1986.

The month of December and emergency situations are the only exceptions to the work hour limits provided by this section for full-time regular employees not on the OTDL.

Both work and paid leave hours are "work" for the purposes of administration of Section 8.5F.

### **Section 8.6 Sunday Premium Payment**

Each employee whose regular work schedule includes a period of service, any part of which is within the period commencing at midnight Saturday and ending at midnight Sunday, shall be paid extra compensation at the rate of 25 percent of the employee's base hourly rate of compensation for each hour of work performed during that period of service. An employee's regularly scheduled reporting time shall not be changed on Saturday or Sunday solely to avoid the Sunday premium payment.

An employee who works on a Sunday or any work period that falls partly on a Sunday, receives Sunday premium pay that is an extra twenty-five (25) percent of the base hourly straight-time rate. Sunday premium is in addition to the employee's regular straight-time rate of pay.

The "no pyramiding" provisions of Section 8.4C apply to Sunday premium. If it appears that Sunday premium and overtime would be applicable for the same hours worked, the employee would be compensated at the higher (overtime) of the two rates.

A grievance over whether employees were being properly compensated for Sunday premium when they took leave for a portion of the scheduled work day was mutually settled as follows:

1. An employee who is scheduled to work where a portion of the work hours overlaps to Sunday will be paid Sunday premium for actual work hours.

2. In the same circumstance, an employee who takes leave for that portion of the work day that is actually Sunday will receive Sunday premium for actual hours worked.
3. An employee will not receive Sunday premium for those hours for which leave has been taken.

Source: Pre-arbitration Settlement H8C-4B-C 22242, dated January 25, 1983.

**Question:** If an employee's scheduled tour begins on Saturday and ends on Sunday, and the employee works the Saturday hours but takes leave for the Sunday hours, does the employee receive Sunday premium for the hours actually worked on Saturday?

**Answer:** Yes. Under the definition of Sunday premium, an employee who has a scheduled tour, any part of which includes Sunday, is entitled to Sunday premium for the hours actually worked in that schedule, even though the employee may not work that portion of the tour that falls on the calendar day of Sunday.

Source: Step 4 Grievance H8C-2M-C 10215, dated January 27, 1983.

However, for an employee whose regular work schedule includes a period of service, any part of which is within the period commencing at midnight Saturday and ending at midnight Sunday, the Sunday premium to which the employee is normally entitled is continued while the employee is in a continuation of pay (COP) status, on military leave, or on court leave or while the employee is rescheduled due to a compensable disability in lieu of placement in a COP status. Furthermore, where an arbitration award or settlement specifies that an employee is entitled to back pay in a case involving disciplinary suspension or removal, such employee meeting the above criteria shall be paid Sunday premium. (This settlement is retroactive to Pay Period 10, 2000).

Source: Pre-arbitration Settlement Q98M-4Q-C 00103887, dated March 17, 2004.

An eligible employee who is scheduled by management to work and does work on a nonovertime basis on a Sunday, even if the employee was scheduled on Sunday pursuant to a request for a temporary schedule change for personal convenience, is entitled to Sunday premium pay under Article 8.6 of the National Agreement.

Source: National Arbitration Award I90C-1I-C 910325156 & H7C-4S-C 29885, Arbitrator S. Das, dated April 15, 2005.

**An employee who is on administrative leave is not entitled to Sunday Premium pay for hours he or she would have otherwise worked on a Sunday. However, employees who are released on administrative leave before the normal completion of their tour of duty due to an “Act of God” shall receive Sunday Premium Pay for the time that they receive administrative leave.**

**Source: National Arbitration Award Q06C-4Q-C 08058827, Arbitrator Linda Byars, dated August 24, 2010; Step 4 Settlement, Q98M-4Q-C 00274228, dated August 19, 2014.**

Absent an operational justification, employee schedules will not be established or posted “solely to avoid the payment of Sunday Premium.”

Source: Step 4 Settlement, Unnumbered, dated March 12, 1975.

### **Section 8.7 Night Shift Differential**

For time worked between the hours of 6:00 p.m. and 6:00 a.m. employees shall be paid additional compensation at the applicable flat dollar amount at each pay grade and step in accordance with **Tables Three and Four**, attached.

Night shift differential is extra compensation, over and above the employee’s base straight time rate of pay, for all hours worked between 6:00 p.m. and 6:00 a.m. Compensation is paid as a fixed dollar amount based on the level and step of the employee’s base hourly straight time rate. The rates are set forth in the tables published in the National Agreement.

The "no pyramiding" provisions of Section 8.4C do not apply to the night shift differential because the night-shift differential is not considered a "premium" under that section. Night shift differential would be paid in addition to overtime or Sunday premium pay.

Source: ELM Chapter 4, Exhibit 438.52

Employees placed on administrative leave shall be paid night differential if they would have otherwise been eligible/entitled to such differential had they not been placed on administrative leave.

Source: National Arbitration Award J90M-1J-C 95047374, Arbitrator P. Parkinson, dated December 8, 2000.

**Question: Do MHAs receive Night Differential or Sunday Premium?**

**Answer: MHAs receive night differential as defined in Article 8.7 of the National Agreement. MHAs do not receive Sunday Premium pay.**

## **Section 8.8 Guarantees**

An employee called in outside the employee's regular work schedule shall be guaranteed a minimum of four (4) consecutive hours of work or pay in lieu thereof where less than four (4) hours of work is available. Such guaranteed minimum shall not apply to an employee called in who continues working on into the employee's regularly scheduled shift. When a full-time regular employee is called in on the employee's non scheduled day, the employee will be guaranteed eight hours work or pay in lieu thereof. This guarantee will be waived if the employee, with the concurrence of the Union and approval of Management, requests to be released early. The Employer will guarantee all employees at least four (4) hours work or pay on any day they are requested or scheduled to work in a post office or facility with 200 or more man years of employment per year. All employees at other post offices and facilities will be guaranteed two (2) hours work or pay when requested or scheduled to work.

Any MHA who is scheduled to work and who reports to work in an installation with 200 or more man years of employment shall be guaranteed four (4) hours of work or pay. MHAs at smaller installations will be guaranteed two (2) hours work or pay.

The first two (2) sentences of this section apply to full-time regular and part-time regular employees. When these categories of employees are called in outside of their regular work schedule on a regularly-scheduled workday, they are guaranteed four (4) consecutive hours of work (or pay in lieu of work). This guarantee does not apply when the employee continues to work into the employee's regularly scheduled shift.

A full-time regular called in on a non-scheduled day is guaranteed eight (8) hours of work (or pay in lieu thereof). If the employee voluntarily requests to be released early and the union concurs, management may approve such early release. This guarantee also applies on a holiday or designated holiday.

**On any calendar day, including holidays, an MHA who is scheduled to work and who reports to work in an installation with 200 or more man years of employment shall be guaranteed four (4) hours of work or pay; MHAs at smaller installations are guaranteed two (2) hours work or pay.**

Management will not solicit employees to work less than their guarantees, including not making such solicitations in place of seeking employees who would work their full guarantees.

Source: Step 4 Grievances NC-C-12644, dated October 31, 1978, and NC-S-12640, dated November 20, 1978.

**Question:** When can the eight-hour guarantee be waived by the employee?

**Answer:** The eight-hour guarantee can be waived by the voluntary request of the employee with the concurrence of the union and the approval of management.

**Question:** What is the minimum number of hours that a part-time flexible, part-time regular employee, **or MHA** can be scheduled or requested to work in a service day?

**Answer:** In facilities with 200 or more man years of employment, the guarantee is four hours. In all other facilities, the guarantee is two hours.

**Question:** Can a part-time flexible employee be returned to work on the same day without incurring another guarantee period?

**Answer:** Yes. When a part-time flexible is notified prior to clocking out that he/she should return within two hours, this is considered a “split shift” and no new guarantee applies.

However, when a part-time flexible employee is notified prior to clocking out that he/she should return after two hours, that employee must be given another minimum guarantee of two hours work or pay for the second shift. This guarantee is applicable to any size office.

Also, all part-time flexible employees who complete their assignment, clock out and leave the premises, regardless of the interval between shifts, are guaranteed four hours of work or pay if called back to work. This guarantee is also applicable to any size office.

Source: Step 4 Grievance H8N-1N-C 23559, dated January 27, 1982.

### **Section 8.9 Wash Up Time**

Installation heads shall grant reasonable wash up time to those employees who perform dirty work or work with toxic materials. The amount of wash up time granted each employee shall be subject to the grievance procedure.

This section establishes a general obligation, enforceable through the grievance procedure, for installation heads to grant reasonable wash-up time to those employees who perform dirty work or work with toxic materials.

Article 30 (Section 30.2A) provides that the local parties may discuss the need for “additional or longer wash-up periods” during local implementation.

**(The preceding sections, Articles 8.2, 8.3, 8.4, 8.5, 8.7, 8.8, and 8.9, shall apply to Mail Handler Assistant employees to the extent provided in the MOU Re: Mail Handler Assistant employees or in this Article.)**

## **MEMORANDUM OF UNDERSTANDING**

### **IMPROPER BY-PASS OVERTIME**

1. When, for any reason, an employee on the “Overtime Desired” list who has the necessary skills and who is available is improperly passed over and another employee on the list is selected for overtime work out of rotation, the following shall apply:
  - a. An employee who was passed over shall, within ninety (90) days of the date the error is discovered, be given a similar make-up overtime opportunity for which he has the necessary skills.
  - b. Should no similar make-up overtime opportunity present itself within ninety (90) days subsequent to the discovery of the missed opportunity, the employee who was passed over shall be compensated at the overtime rate for a period equal to the opportunity missed.
2. When, for any reason, an employee on the “Overtime Desired” list who has the necessary skills and who is available is improperly passed over and another employee not on the list is selected for overtime work, the employee who was passed over shall be paid for an equal number of hours at the overtime rate for the opportunity missed.
3. When a question arises as to the proper administration of the “Overtime Desired” list at the local level, a Mail Handler steward may have access to appropriate overtime records.

This MOU provides specific guidance for resolving disputes regarding the bypassing of OTDL employees for other employees on the OTDL or for employees not on the OTDL.

Note that, for purposes of Paragraph 2 of the MOU, PTFs, **MHAs**, and casuals are also considered to be “another employee.”

Source: Letter to All Affected Representatives, September, 1987.

**Question:** What is the remedy if an employee on the OTDL is improperly bypassed?

**Answer:** If the OTDL employee is improperly bypassed and another employee on the OTDL is selected out of rotation, the bypassed employee is provided a similar make-up opportunity within 90 days of when the error is discovered; if no similar make-up opportunity is available within that 90 days, the employee is compensated at the overtime rate for a period equal to the opportunity missed.

If the OTDL employee is improperly bypassed for another employee not on the OTDL, the bypassed employee will be paid at the overtime rate for the number of hours equal to the opportunity missed.

## **MEMORANDUM OF UNDERSTANDING**

### **OVERTIME/ACTING SUPERVISOR (204B) DETAILED EAS POSITION**

The parties agree to the following regarding the scheduling of an employee detailed as an acting supervisor (204b) or detailed to an EAS position:

1. A craft employee working as an acting supervisor (204b) or in a detailed EAS position is ineligible to work overtime at the beginning or end of his/her tour on any given day during the term of the detail, unless all available bargaining-unit employees on the "Overtime Desired" list are utilized. If the 204b employee or employee detailed to an EAS position is on the "Overtime Desired" list, he/she may be scheduled for overtime after all of the available employees on the "Overtime Desired" list are utilized. If the 204b or detailed EAS employee is not on the "Overtime Desired" list, then he/she will be scheduled according to Article 8.5.D of the National Agreement after all available bargaining unit employees on the "Overtime Desired" list are utilized.
2. A craft employee working as an acting supervisor (204b) or detailed to an EAS position is eligible to be considered for an overtime assignment on his/her non-scheduled day(s) immediately following the termination of his/her 204b or EAS detail in accordance with Article 8.5 of the National Agreement, unless the mail handler is to continue on a 204b or EAS assignment into the service week following the termination of his/her present 204b or EAS assignment. If that occurs, the 204b or detailed EAS employee would be ineligible for the overtime unless all available bargaining unit employees on the "Overtime Desired" list are first utilized for that non-scheduled day overtime.

This MOU outlines those situations in which a craft employee serving as an acting supervisor (204b) or in another EAS position may be eligible to, or may be required to, work overtime.

Paragraph 1 of the MOU provides that all available employees on the appropriate OTDL will be utilized on overtime before the 204b or detailed EAS employee can

be permitted or required to work overtime before or after his/her tour of duty on any day of the detail period.

Paragraph 2 of the MOU makes a distinction dependent on whether or not the employee's 204b or EAS detail will continue into the following service week. In those circumstances in which the 204b or EAS detail will continue into the employee's following service week, that employee cannot work non-scheduled day overtime until after all available employees on the OTDL are utilized.

These MOU provisions apply to mail handlers on 204b details as acting supervisors or detailed to other EAS positions whether or not those mail handlers are otherwise on the OTDL. If the mail handler on 204b or EAS detail is on the OTDL, his/her scheduling would be governed by Section 8.5C after all OTDL mail handlers have been utilized. If the mail handler on 204b or EAS detail is not on the OTDL, his/her scheduling would be governed by Section 8.5D after all OTDL mail handlers have been utilized.

## **ARTICLE 9 SALARIES AND WAGES**

### **Section 9.1 Basic Annual Salary**

Employees with career appointments before February 15, 2013 shall be paid and earn step increases according to the rates and waiting periods described in Section 9.2A and outlined in Table One.

Employees with career appointments on or after February 15, 2013 shall be paid and earn step increases according to the rates and waiting periods described in Section 9.2B and outlined in Table Two.

The basic annual salary schedule, with proportional application to hourly rate employees, for all grades and steps for those employees covered under the terms and conditions of this Agreement shall be increased as follows:

**Effective November 26, 2016 – the basic annual salary for each grade and step of Table One and Table Two shall be increased by an amount equal to 1.2% of the basic annual salary for the grade and step in effect on May 20, 2016.**

**Effective November 25, 2017 – the basic annual salary for each grade and step of Table One and Table Two shall be increased by an amount equal to 1.3% of the basic annual salary for the grade and step in effect on May 20, 2016.**

**Effective November 24, 2018 – the basic annual salary for each grade and step of Table One and Table Two shall be increased by an amount equal to 1.3% of the basic annual salary for the grade and step in effect on May 20, 2016.**

**General wage increase:** Section 9.1 provides for **three** general wage increases during the **three years and four months of the 2016 National Agreement**. The wage increases are **1.2% effective on November 26, 2016, 1.3% effective on November 25, 2017, and 1.3% effective on November 24, 2018.**

**PTFs:** The “proportional application to hourly rate employees” means that part-time flexible Mail Handler employees, who are paid on an hourly basis and have no guaranteed annual salaries, receive general wage increases of **1.2%, 1.3%, and 1.3%** in their hourly rates.

**Question:** When can salary checks be issued to employees?

**Answer:** Salary checks generally are distributed on the date printed on the salary check. However, provided that they are available at the employee's pay location, salary checks and earnings statements can be distributed on a date other than the salary check date under the following conditions:

1. After local banks close on Thursday, to employees whose regular tour of duty ends after local banks close on Friday; or
2. At the end of the employee's tour on Thursday, to those employees who are not scheduled for duty on a Friday payday or are scheduled for leave on a Friday payday; or
3. When Friday is a national holiday and Thursday is a payday, at the end of an employee's tour on Wednesday for those employees meeting either condition 1 or condition 2 above.

Source: F-1 Handbook, Section 822.1; Letter from T. Valenti, USPS, to W. Flynn, NPMHU, dated August 28, 1998.

**Question:** Can an employee have his or her salary check deposited directly to a financial institution?

**Answer:** Yes. The Postal Service honors employee requests to forward all or part of their salaries for credit to their accounts at financial organizations. The employee needs to complete and submit Form 1199-A, Direct Deposit.

Source: F-1 Handbook, Section 822.4

**Question:** How do employees who utilize direct deposit obtain their earnings statements?

**Answer:** The Earnings Statement – Net to Bank for an employee who has direct deposit (net to bank) is mailed to the employee's address of record. Each employee is responsible to ensure that his or her address of record information is correct. Employees may update their current mailing address by submitting PS Form 1216, Employee's Current Mailing Address, to their Human Resources office.

Source: Postal Bulletin 22044, dated February 22, 2001.

**Question:** Can an employee request to have his or her salary check mailed to a home or forwarding address?

**Answer:** Yes, under certain conditions. Employees may complete Form 3077 to request forwarding of salary checks when the employee is on leave or on

temporary detail away from his or her regular installation. Such requests may cover the period of leave or detail.

Source: F-1 Handbook, Section 822.3

## Section 9.2 Step Progression

### A. Table One – Career Appointments Before February 15, 2013

The step progression for the Mail Handler Salary Schedule **on Table One** shall be as follows:

Grades 4,5		Waiting Period
From Step	To Step	(in weeks)
AA	A	88
A	B	88
B	C	88
C	D	44
D	E	44
E	F	44
F	G	44
G	H	44
H	I	44
I	J	44
J	K	34
K	L	34
L	M	26
M	N	26
N	O	24
O	P	24

Grades 6		Waiting Period
From Step	To Step	(in weeks)
A	B	96
B	C	96
C	D	44
D	E	44
E	F	44
F	G	44
G	H	44
H	I	44

I	J	44
J	K	34
K	L	34
L	M	26
M	N	26
N	O	24
O	P	24\

**B. Table Two – Career Appointments On or After the Effective Date of the Award, February 15, 2013**

The step progression for the Mail Handler Salary Schedule on Table Two shall be as follows:

Grades 4, 5 From Step	To Step	Waiting Period (in weeks)
BB	AA	52
AA	A	52
A	B	52
B	C	52
C	D	52
D	E	52
E	F	52
F	G	52
G	H	52
H	I	52
I	J	52
J	K	52
K	L	52
L	M	52
M	N	52
N	O	52
O	P	52

**Question: For career appointments before February 15, 2013, what is the total length of time required to advance from Step AA to Step P?**

**Answer: Under normal circumstances, 740 weeks.**

**Question: For career appointments on or after February 15, 2013, what is the total length of time to advance from Step BB to Step P?**

**Answer: Under normal circumstances, 884 weeks.**

**Question:** Can management deny a periodic step increase because of unsatisfactory performance?

**Answer:** No. The parties have agreed that periodic step increases will not be withheld for reason of unsatisfactory performance.

Source: Memorandum of Understanding Re. Step Increase Unsatisfactory Performance

**Question:** How does leave without pay (LWOP) affect periodic step increases?

**Answer:** When an employee has been on LWOP for 13 weeks or more during the waiting period for a periodic step increase, the scheduled date for that employee's next step increase will be deferred. The length of the deferral period is based on the number of weeks, beyond 13 weeks, that the employee has been on LWOP. However, the time that an employee is carried in an LWOP status for military furlough, official union business or while on the rolls of the Office of Workers' Compensation Programs is exempt from this provision. Also, only whole days of LWOP are counted for step deferral purposes; a day on which an employee works part of the day and uses LWOP in lieu of annual or sick leave for the remainder of the day does not count.

Source: Employee and Labor Relations Manual Chapter 4, Sections 423 and 422.33

**Question:** Is there a requirement to provide advance notice to an employee whose step increase is to be withheld due to leave without pay usage?

**Answer:** Yes. Current instructions require written advance notice when an employee's step increase is to be withheld. Note that in the grievance referenced as the source document, the employee's step increase was reinstated retroactively to the due date.

Source: Step 4 Grievance H4C-3W-C 37256, dated October 23, 1987.

**On the question whether a Level 4, Step 0 employee who is detailed to a Level 5, Step N duty assignment is entitled to be advanced to Level 5, Step 0 after spending the requisite waiting period (24 weeks) at Step N, the parties have agreed that once an employee who has been detailed to Level 5, Step N spends 24 continuous weeks in the higher level assignment, the employee is entitled to be advanced to Level 5, Step 0.**

**Source: Step 4 Grievance A00M-1A-C 05085524, dated January 21, 2011.**

**On the question whether a Level 5, Step O employee who bids to a lower level duty assignment (Level 4) should subsequently be paid Level 5, Step O when he/she is temporarily detailed to a higher level duty assignment, the parties have agreed that the employee must be paid at the Level 5, Step O pay rate.**

**Source: Step 4 Grievance C00M-1C-C 04147342, dated May 27, 2010.**

### **Section 9.3 Cost of Living Adjustment**

#### **A Definitions**

1. "Consumer Price Index" refers to the "National Consumer Price Index for Urban Wage Earners and Clerical Workers," published by the Bureau of Labor Statistics, United States Department of Labor (1967=100) and referred to herein as the "Index."
2. "Consumer Price Index Base" refers to the Consumer Price Index for the month of **July 2014** and is referred to herein as the "Base Index."

#### **B. Effective Dates of Adjustment**

Each eligible employee covered by this Agreement shall receive cost-of-living adjustments, upward, in accordance with the formula in 4.C, below, effective on the following dates:

- the second full pay period after the release of the **July 2016** Index
- the second full pay period after the release of the **January 2017** Index
- the second full pay period after the release of the **July 2017** Index
- the second full pay period after the release of the **January 2018** Index
- the second full pay period after the release of the **July 2018** Index
- the second full pay period after the release of the **January 2019** Index
- the second full pay period after the release of the **July 2019** Index.

- C** The basic salary schedule provided for in Table One and Step P of Table Two of this Agreement shall be increased 1 cent per hour for each full 0.4 of a point increase in the applicable Index above the Base Index. For example, if the increase in the Index from **July 2016** to **January 2017** is 1.2 points, all pay scales for employees covered by this Agreement will be

increased by 3 cents per hour. In no event will a decline in the Index below the Base Index result in a decrease in the pay scales provided for in this Agreement. Step BB through O in the basic salary schedules provided for in Table Two of this Agreement shall receive COLAs calculated using the formula in this paragraph, adjusted proportionally as reflected in Table Two.

- D In the event the appropriate Index is not published on or before the beginning of the effective payroll period, any adjustment required will be made effective at the beginning of the second payroll period after publication of the appropriate Index.
- E No adjustment, retroactive or otherwise, shall be made due to any revision which may later be made in the published figures for the Index for any month mentioned in 4.B., above.
- F If during the life of this Agreement, the BLS ceases to make available the CPI-W (1967=100), the parties agree to use the CPI-W (1982-84=100) at such time as BLS ceases to make available the CPI-W (1967=100). At the time of change to the CPI-W (1982-84=100), the cost-of-living formula in Section 9.4.C. will be recalculated to provide the same cost-of-living adjustment that would have been granted under the formula using the CPI-W (1967=100).

**Seven cost-of-living adjustments:** Section 9.3B provides for seven cost-of-living adjustments, also known as COLA payments, during the life of the **2016** National Agreement.

**The Consumer Price Index:** COLA payments vary based on changes in the Consumer Price Index as defined in Section 9.3A1. The Postal Service and the NPMHU use the Consumer Price Index for Urban Wage Earners and Clerical Workers, CPI-W, which is published by the Bureau of Labor Statistics on a monthly basis.

The CPI-W tracks the cost of a fixed “market basket” of goods each month. The cost of this “market basket” is set equal to 100 points in a given “base year” so that later price changes may be compared to it.

**Base Period Index:** Section 9.3A2 establishes July **2014** as the base period used to calculate future COLA payments. The CPI-W (1967=100) for July **2014** is **698.580**. Section 9.3B sets the time for each COLA payment. COLA payments under the **2016** agreement will likely be effective in March and September.

**COLA Formula:** Section 9.3C states the formula on which COLA payments are based, namely, one cent per hour for each full 0.4 change in the CPI-W.

Section 9.3C also specifies that each COLA payment shall become a permanent part of basic salary.

**Potential CPI Change:** Section 9.3F ensures continuity of the COLA provisions should the BLS decide to discontinue the CPI-W (1967=100) during the **2016** agreement. Should that happen, the parties will use instead the CPI-W (1982-84=100), which measures price changes the same way but with a base period of 1982-84=100. In addition the COLA formula detailed at Section 9.3C would be changed to ensure that NPMHU employees receive COLA payments equal to what they would have received under the CPI-W (1967=100).

**Different CPI bases:** Although the 1982-84 CPI-W series produces the same percentage increase as the 1967 series, the resulting COLA payment using the 0.4 formula would be less under the 1982-84 series than under the 1967 series. Therefore, the 0.4 formula would require modification to produce the same COLA payment as under the 1967 series.

**Question:** Is the cost-of-living adjustment (COLA) included in the mail handler basic salary schedule?

**Answer:** Yes. COLA payments are added to the employee's basic pay on the effective dates listed in Section 9.3B.

#### **Section 9.4 Application of Salary Rates**

Except as provided in this Article, the Employer shall to continue the current application of salary rates for the duration of this Agreement.

#### **Section 9.5 Granting Step Increases**

Except as provided in this Article, the Employer will continue the program on granting step increases for the duration of this Agreement.

#### **Section 9.6 Protected Salary Rates**

- A The Employer shall continue the current salary rate protection program for the duration of this Agreement.
- B Employees who qualify for "saved grade" will receive "saved grade" for an indefinite period of time subject to the conditions contained in Article 4.4.

[See Memo, page 151]

**Salary rate retention:** Section 9.6 specifically continues in effect the three salary rate retention provisions contained in Employee and Labor Relations Manual (ELM), Section 421.5 as follows:

**1. Protected rate:** A career employee assigned to a lower grade position will continue to receive the salary paid in the previous grade, for a maximum period of two calendar years provided the requirements of ELM, Section 421.511 are met.

**2. Saved rate:** An employee receives permanent “saved rate” salary protection when management gives him/her a permanent, nondisciplinary and involuntary assignment to a lower grade due to a management action such as a change in job ranking criteria affecting more than one person under the same job description. Saved rate protection is also available to employees receiving a “red circle” salary amount in excess of the maximum for the grade. (ELM, Section 421.52)

**3. Saved grade:** Article 4 (Section 4.4) and ELM Section 421.53 both provide that an employee’s salary rate is retained *indefinitely* if his or her job is eliminated due to mechanization or technological change, until such time as the employee fails to bid or apply for a position in his or her former wage level.

Below is a reprint of the above referenced provisions of the ELM.

#### **421.5 Rate Retention Provisions**

##### **421.51 Protected Rate**

##### **421.511 Explanation**

An individual employee who is assigned to a lower grade position has a protected rate (i.e., continues to be paid the salary he or she received in the previous higher grade position, as detailed in 421.512, below, augmented by any general increases granted (see also 422.13), for a specified period of 2 calendar years provided all of the following conditions are satisfied:

- a. The employee is serving under a career appointment.
- b. Reduction in salary standing is not disciplinary (for personal cause) or voluntary (at the request of the employee).
- c. The employee served for 2 continuous years immediately preceding the effective date of reduction in a position with a salary standing higher than that to which reduced.

d. Salary in the higher salary standing was not derived from a temporary appointment or temporary assignment.

e. Reduction in salary standing is not caused by a reduction in force due to lack of funds imposed on the Postal Service by outside authority or curtailment of work. For this purpose, curtailment of work does not include reduction in revenue unit category of any post office or reduction in route mileage on a rural route.

f. Employee's performance of work was satisfactory at all times during such period of 2 calendar years.

#### 421.512 **Rate Determination**

The basic salary of an employee entitled to a protected rate is the *lowest* of the following:

- a. The employee's basic salary at the time of reduction.
- b. An amount that is 25 percent more than the maximum basic salary for the new grade (i.e., the grade to which reduced).
- c. The basic salary in the *lowest* salary standing that the employee held during the 2 years immediately preceding reduction in salary standing, augmented by each step increase he or she would have earned in such salary standing.

**Note:** For rural carriers serving evaluated routes, the existing basic salary includes additional heavy duty compensation up to 40 hours.

#### 421.513 **Duration**

An employee who is entitled to a protected rate retains the protected rate, augmented by general increases, for 2 calendar years from the effective date of the protected rate. If, before the 2 years expires, the employee is again reduced in salary standing, the following applies:

- a. A new protected rate period of 2 calendar years begins.

- b. The new protected rate is redetermined according to the rule in 421.512 in relation to the salary standing following the latest reduction.

#### **421.514 Termination**

Rate protection ceases at the beginning of the pay period following a determination that an employee is no longer entitled to protection for any one of the following reasons:

- a. A break in service of 1 workday or more.
- b. Reduction to a lower salary standing (1) for disciplinary reasons or (2) at employee's own request.
- c. Promotion or other advancement of employee to a higher grade or salary range in the same schedule, or to a position with a higher than equivalent grade in another schedule, above the protected rate.
- d. Compensation of the employee is changed for any reason, other than by a general increase, to a basic salary equal to or higher than the protected rate.

#### **421.515 Effect on Other Compensation**

Rate protection affects other compensation as follows:

- a. *Promotion Rules.* In applying the promotion rules, the former basic salary is the basic salary the employee would have received except for the protected rate.
- b. *Rural Routes.* Equipment maintenance allowances on rural routes are paid in relation to the documented route to which the carrier is assigned.

#### **421.516 Documentation**

Form 50, *Notification of Personnel Action*, is used to notify an employee who is changed to a lower grade or salary standing of entitlement to rate retention. It contains a reference under the remarks section to 421.5 as authority for the amount and duration of the rate retention. The Form 50 also is used to notify an employee of the expiration of a rate retention status.

#### 421.517 **Step Increases**

An employee with a protected rate continues to receive step increases in the grade to which the employee is reduced. However, under no circumstances can receipt of these step increases cause the employee's salary to exceed the maximum step of the lower grade.

#### 421.52 **Saved Rate**

##### 421.521 **Explanation**

Employees with a saved rate will continue to be paid the salary they received in the previous higher grade position, augmented by any general increases occurring while the saved rate is in effect. A saved rate differs from a protected rate in that it continues for an indefinite period, subject to the conditions explained below (see 421.522 through 421.526) and occurs in several different circumstances, as follows:

- a. An employee is given a *permanent, nondisciplinary, and involuntary* assignment to a lower grade due to a management action such as a change in job ranking criteria affecting more than one position under the same job description. In this case, saved rate means that the employee continues to receive the salary of the higher grade position.
  
- b. Management action effects a general increase that, when added to an employee's salary, produces a salary above the maximum rate for the grade. In this case, *saved rate* means that the amount of the general increase is added to the employee's salary and the employee continues to receive the new salary even though it is above the maximum for the grade.

##### 421.522 **Red-Circle Amount**

The *red-circle amount* is the dollar portion of an employee's salary that is in excess of the maximum salary of the grade. An employee continues to receive a red-circle amount as long as he or she is in saved rate status. Note the following:

- a. Red-circle amount results from saved rate only. It does *not* result from protected rate.

b. If an employee who receives a red-circle amount (under section C, Special Rule, Pay System for Employees, covered by the collective bargaining agreement of November 18, 1970) is subsequently promoted and later returned to the former position, the red-circle amount is restored.

#### **421.523 Duration**

Employees retain the saved rate for as long as they hold a position in the same or higher grade for which the maximum schedule rate is below the saved rate.

#### **421.524 Termination**

Saved rate is terminated for any of the following reasons:

- a. A break in service of 1 workday or more.
- b. Demotion or voluntary reduction.
- c. Promotion resulting in a salary equal to or above the saved rate.

#### **421.525 Effect on Promotion**

If the employee has a saved rate due to assignment to a lower grade position and is assigned to a different position, the assignment is not a promotion for purposes of pay adjustment, unless the assignment is to a position with a grade higher than the grade on which the saved rate was established.

#### **421.526 Documentation**

Form 50, *Notification of Personnel Action*, is used to notify an employee of a saved rate status.

#### **421.53 Saved Grade**

##### **421.531 Explanation**

Saved grade provisions can be invoked only in accordance with the applicable collective bargaining agreement. Decisions to disapprove saved grade are subject to review through the grievance and arbitration process. Saved grade must be approved

by area Human Resources managers or their designees. Saved grade applies to all bargaining unit employees *except* the following:

- a. Employees in Operating Services Division at Headquarters and the Merrifield Engineering Support Center (APWU) (see 427.2).
- b. Employees under the National Postal Professional Nurses' (NPPN) Agreement (see 425).
- c. Employees under the Fraternal Order of Police, National Labor Council (FOP-NLC) Agreement (see 428).

#### 421.532 **Duration and Termination**

The saved grade will be in effect for an indefinite period of time subject to the conditions below:

- a. To continue to receive a saved grade, an employee must bid or apply for all vacant jobs in the saved grade for which she or he is qualified.
- b. If the employee fails to bid or apply, the employee loses the saved grade status immediately.
- c. The Information Service Centers collective bargaining agreement requires that, in order to retain the saved grade, employees bid or apply for reassignment to their former grade or to any position at a grade between that of their former grade and present grade.

#### 421.533 **Step Increases**

An employee with a saved grade continues to receive step increases in the saved grade. However, under no circumstances, can these step increases exceed the maximum step of the saved grade (see 421.45b).

**Question:** If a mail handler is involuntarily reassigned to a lower level position as a result of automation or technological and mechanization changes, what salary does that employee receive while in the lower level position?

**Answer:** The employee would receive rate protection in the form of saved grade until such time as he or she failed to bid or apply for a position in the employee's former wage level.

**Question:** If an employee who is already assigned to a lower level position and is still in the protected rate period voluntarily bids on a position in that same lower grade, does that employee lose his or her protected status?

**Answer:** No. A voluntary bid under these circumstances is not considered a voluntary reduction to a lower salary standing at the employee's request.

Source: Pre-arbitration Settlements H1C-5D-C 8540, dated August 4, 1983, and H1N-1J-C 18920, dated April 4, 1985.

**The parties at the National Level signed a May 13, 2014 pre-arbitration settlement stating as follows:**

**The issue in [these] grievances is whether certain revisions of Employee and Labor Relations Manual (ELM) Section 420, *Wage Administration Policy for Bargaining Unit Employees* are fair, reasonable and equitable.**

**After reviewing this matter, we agree to resolve this grievance based on the following:**

**422.325 Reductions in Grade**

**a. \*\*\***

**b. Step and Next Step Date Assignment for Bargaining Unit to Bargaining Unit Reductions in Grade within or into the mail handler rate schedule (RSC M). Assignments are made as follows:**

- 1. To Former Lower Grade. The employee is assigned to the step and next step date as if service had been uninterrupted in the lower grade since the last time held.**
- 2. To New Lower Grade. The employee is assigned to the step and next step date in the lower grade as if all postal service had been in the lower grade.**

**The Postal Service will modify the ELM, Section 422.325 to incorporate the above principle in accordance with Article 19 of the collective bargaining agreement.**

**Source: Pre-arbitration Settlement Q00M-6Q-C 06280834, dated May 13, 2014.**

**MEMORANDUM OF UNDERSTANDING**

## PROMOTION PAY ANOMALY

In recognition of the need to correct the promotion pay anomaly contained in the current salary schedule, the Postal Service and the National Postal Mail Handlers Union, a Division of the Laborers' International Union of North America, AFL-CIO, agree to meet and to continue their discussions with respect to this matter with the ultimate goal of correcting the promotion pay anomaly by creating a new salary schedule and related administrative rules as soon as practicable.

The new salary schedule will contain the following features:

- Uniform waiting periods by grade resulting in a shorter cumulative period to reach the top of a grade as compared to the current salary schedule.
- Uniform step increase amounts by grade.

In recognition of the administrative burdens in processing employee pay changes (promotions, higher level pay, repromotions, change to lower level, etc.) to the extent practical, the parties agree that the Postal Service will implement new and simplified administrative rules to be set forth in the Employee and Labor Relations Manual as soon as practicable.

**Question:** What is meant by the term “promotion pay anomaly”?

**Answer:** The term “promotion pay anomaly” refers to the situation where employees who have been promoted to higher grades in Steps A, B, or C earn less than similarly tenured employees who have not been promoted but receive a step increase in the lower grade. The resulting difference in earnings is called the “promotion pay anomaly.”

**Question:** Is there a procedure in place to correct this anomaly?

**Answer:** Yes. The parties at the National level have agreed to a settlement that provides lump-sum monetary payments to eligible employees on a quarterly basis. Affected employees are notified by means of a notation (ABC Lump Sum Included) on their earnings statement. However, an employee who has questions about whether he or she should be included may contact his or her personnel office or union representative.

**In a Memorandum of Understanding dated February 6, 1991, the parties at the National level agreed as follows: “Effective November 21, 1990, employees who have been promoted from Steps A, B, or C and who have been reassigned to their former grade will be placed in the step they would have been in, with credit toward their next step increase, as if all service had been in the original grade. However, such employees who are subsequently repromoted will be placed in the steps they would have**

**attained, with credit toward their next step increase, as if they had remained continuously in the higher grade since the original promotion.”**

**In that same MOU, the Postal Service and the Union agreed to the following principle: “No employee will, as a consequence of a promotion, at any time be compensated less than that employee would have earned if the employee had not been promoted but had, instead, merely advanced in step increments in that employee’s grade as a result of fulfilling the waiting time requirements necessary for step increases. This includes affected employees who are or were promoted to a higher grade and subsequently reassigned to their former grade.”**

**Source: MOU between USPS and NPMHU, dated February 6, 1991.**

**Question:** Have the parties implemented the MOU Re Promotion Pay Anomaly that appears in the National Agreement and is reprinted above by agreeing to a new salary schedule and related administrative rules to correct the promotion pay anomaly?

**Answer:** No. As of the date that this document was produced, the promotion pay anomaly continues to affect certain employees, although, as noted above, those affected employees receive compensatory payments on a quarterly basis.

### **Section 9.7 Mail Handler Assistant Employees**

**In addition to the general increases provided in Section 9.1 above, MHAs will receive an increase of 1.0% annually, for a total of 2.2% effective November 26, 2016, 2.3% effective November 25, 2017, and 2.3% effective November 24, 2018.**

**MHAs will also receive hourly wage increases as follows:**

- **\$0.90 per hour effective November 26, 2016**
- **\$0.20 per hour effective May 26, 2018**
- **\$0.21 per hour effective May 25, 2019**

**All percentage increases are applied to the wage rates in effect on May 20, 2016.**

**[See Memo, page 136]**

## ARTICLE 10 LEAVE

This article contains the National Agreement's general provisions concerning the leave program. Article 10 guarantees continuation of the leave program (Sections 10.1 and 10.2), outlines the national program for the use of annual leave through vacation planning (Sections 10.3, 10.4 and 10.5), provides for sick leave (Section 10.6) and states certain additional leave rules concerning minimum leave charges and leave without pay (LWOP) (Section 10.6).

The rules governing the various types of USPS leave are contained in several source documents identified below:

- **ELM, Subchapter 510.** Section 10.2 specifically incorporates the Employee and Labor Relations Manual (ELM), Subchapter 510. Subchapter 510, Sections 511-519 contain the specific regulations controlling leave for career bargaining unit employees.
- **Local Memorandum of Understanding.** Normally, the important features of bargaining unit employees' leave are governed by the local memorandum of understanding, which is created and subsequently modified as a result of local implementation pursuant to Article 30 of the National Agreement.
- **Federal law.** The Family and Medical Leave Act (FMLA) is a federal law that entitles eligible employees time off to care for a new child, for a seriously ill family member, for an employee's serious medical problems, **and for qualifying exigencies and military caregiver leave.** The detailed regulations governing the FMLA are found in the federal law and in the Code of Federal Regulations (29 C.F.R. Part 825). **The Postal Service's policy concerning FMLA may also be found in ELM Section 515.**

This material explains the main provisions of Article 10, summarizes other important leave rules and references more detailed provisions concerning leave. It does not attempt to cover all of the detailed leave regulations contained in ELM Subchapter 510 or the FMLA.

### Section 10.1 Funding

The Employer shall continue funding the leave program so as to continue the current leave earning level for the duration of this Agreement.

### Section 10.2 Leave Regulations

A. The leave regulations in Subchapter 510 of the Employee and Labor Relations Manual, insofar as such regulations establish wages, hours, and

working conditions of employees covered by this Agreement, other than MHAs, shall remain in effect for the life of this Agreement.

B. Career employees will be given preference over noncareer employees when scheduling annual leave. This preference will take into consideration that scheduling is done on a tour-by-tour basis and that employee skills are a determining factor in this decision.

C. Article 30 of the National Agreement and Local Memoranda of Understanding provisions do not apply to MHAs, except as specifically referenced in the **2016** National Agreement and as follows: During the local implementation period, the parties may agree to include provisions in the local memoranda of understanding to permit MHAs to apply for annual leave during choice vacation periods, as defined in Article 10 of the National Agreement. Granting leave under such provisions must be contingent upon the MHA having a leave balance of at least forty (40) hours.

[See Memos, pages 152-157]

**(The preceding section, Article 10.2, shall apply to Mail Handler Assistant employees.)**

**Continuation of Leave Program:** Sections 10.1 and 10.2 guarantee continuation of the leave program and refer to the detailed leave regulations published in the ELM.

Subchapter 510 of the ELM contains the detailed Postal Service regulations concerning the administration of the leave program. There are several categories of leave available for absences:

Annual Leave - Section 512

Sick Leave - Section 513

LWOP - Section 514

Absence for Family Care or Serious Health Condition of Employee- Section 515

Court Leave - Section 516

Military Leave - Section 517

Holiday Leave - Section 518

Administrative Leave - Section 519

**Wounded Warrior Leave**

Within the above sections there may be distinctions defined for full-time regular, part-time regular, and part-time flexible bargaining unit employees and for non-bargaining unit employees.

**Annual Leave:** Annual leave is used for vacation and other paid absences. The rate of annual leave earnings is based on “creditable service,” that is, total

cumulative federal service (employment), including certain kinds of military service (See ELM, Section 512.2, Determining Annual Leave Category).

New employees earn annual leave but are not credited with the leave and may not take it prior to completing 90 days of continuous employment (ELM, Section 512.313(b)). There is an exception for employees who transfer without a break in service.

**In 2015, the NPMHU intervened in an NALC national arbitration hearing concerning the right of former Mail Handler Assistants (MHAs) to use annual leave following their conversion to full-time. National Arbitrator Shyam Das wrote:**

**“Section 512.313 of the ELM requires that former City Carrier Assistants who have completed ninety days of continuous employment without a break in service must complete a 90-day qualifying period following their conversion to career status before they may be credited with or take annual leave.”**

**Source: National Arbitration Award Q11N-4Q-C 14239951, Arbitrator Shyam Das dated July 2, 2015.**

Annual leave is paid at an employee’s regular straight-time rate and is limited to a maximum of eight hours during any single day.

Bargaining unit employees typically use annual leave in three ways:

1. By applying in advance, normally based on seniority, for vacation time as specified in this article and in the local memorandum of understanding.
2. Other requests for annual leave as desired throughout the year.
3. Emergency annual leave taken for emergencies.

**Annual leave accrual—full-time employees:** Full-time employees earn annual leave as set forth in ELM, Section 512.311, which is reprinted below. They are credited with the year’s annual leave at the start of each leave year.

#### 512.311 Full-Time Employees

- a. *Accrual Chart.* Full-time employees earn annual leave based on their number of creditable years of service.

Leave Category	Creditable Service	Maximum Leave Per Year
----------------	--------------------	------------------------

4	Less than 3 years	4 hours for each full biweekly pay periods; i.e., 104 hours (13 days) per 26-period leave year.
6	3 years but less than 15 years	6 hours for each full biweekly pay period plus 4 hours in last full pay period in leave year; i.e. 160 hours (20 days) per 26-period leave year.
8	15 years or more	8 hours for each full biweekly pay period; i.e., 208 hours (26 days) per 26-period leave year.

- b. *Credit at Beginning of Leave Year.* Full-time career employees are credited at the beginning of the leave year with the total number of annual leave hours that they will earn for that leave year.

**Annual leave accrual—part-time employees:** Part-time employees earn annual leave as set forth in ELM, Exhibit 512.312. ELM, Section 512.312.b provides that part-time flexibles are credited with annual leave earnings at the end of each biweekly pay period.

Exhibit 512.312

Accrual and Crediting Chart for Part-Time Employees

Leave Category	Years of Creditable Service	Maximum Leave per Year	Rate of Accrual	Hours in Pay Status	Hours of Leave Earned per Period
4	Less than 3 years.	104 hours, or 13 days per 26-period leave year or 4 hours for each biweekly pay period.	1 hour for each unit of 20 hours in pay status.	20 40 60 80	1 2 3 4 (max.)
6	3 years but less than 15 years.	160 hours, or 20 days per 26-period leave year or 6 hours for each full	1 hour for each unit of 13 hours in pay status.	13 26 39 52	1 2 3 4

		biweekly pay period. <sup>1</sup>		65 78	5 6 (max.) <sup>1</sup>
8	15 years or more.	208 hours, or 26 days per 26-period leave year or 8 hours for each full biweekly pay period.	1 hour for each unit of 10 hours in pay status.	10 20 30 40 50 60 70 80	1 2 3 4 5 6 7 8 (max.)

<sup>1</sup>Except that the accrual for the last pay period of the calendar year may be 10 hours, provided the employee has the 130 creditable hours or more in a pay status in the leave year for leave purposes.

**ATTACHMENT A  
MAIL HANDLER ASSISTANT EMPLOYEE (MHA) ANNUAL LEAVE  
PROVISIONS**

**I. GENERAL**

A. Purpose. Annual leave is provided to MHAs for rest, recreation, emergency purposes, and illness or injury.

1. Accrual of Annual Leave. MHAs earn annual leave based on the number of hours in which they are in a pay status in each pay period.

Rate of Accrual	Hours in Pay Status Earned Per Pay Period	Hours of Annual Leave
1 hour for each unit of 20 hours in pay status in each pay period	20 40 60 80	1 2 3 4 (max)

2. Biweekly Crediting. Annual leave accrues and is credited in whole hours at the end of each biweekly pay period.

3. Payment For Accumulated Annual Leave. A separating MHA may receive a lump-sum payment for accumulated annual leave subject to the following condition:

B. A MHA whose separation is effective before the last Friday of a pay period does not receive credit or terminal leave payment for the leave that would have accrued during that pay period.

## II. AUTHORIZING ANNUAL LEAVE

A. General. Except for emergencies, annual leave for MHAs must be requested on Form 3971 and approved in advance by the appropriate supervisor.

B. Emergencies and Illness or Injury. An exception to the advance approval requirement is made for emergencies and illness or injury; however, in these situations, the MHA must notify appropriate postal authorities as soon as possible as to the emergency or illness/injury and the expected duration of the absence. As soon as possible after return to duty, MHAs must submit Form 3971 and explain the reason for the emergency or illness/injury to their supervisor. Supervisors approve or disapprove the leave request. When the request is disapproved, the absence may be recorded as AWOL at the discretion of the supervisor as outlined in Section IV.B below.

## III. UNSCHEDULED ABSENCE

A. Definition. Unscheduled absences are any absences from work that are not requested and approved in advance.

B. MHA Responsibilities. MHAs are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences. In addition, MHAs must provide acceptable evidence for absences when required.

## IV. FORM 3971, REQUEST FOR, OR NOTIFICATION OF, ABSENCE

A. Purpose. Application for annual leave is made in writing, in duplicate, on Form 3971, Request for, or Notification of, Absence.

B. Approval/Disapproval. The supervisor is responsible for approving or disapproving application for annual leave by signing Form 3971, a copy of which is given to the MHA. If a supervisor does not approve an application for leave, the disapproved block on Form 3971 is checked and the reasons given in writing in the space provided. When a request is disapproved, the reasons for disapproval must be noted. AWOL determinations must be similarly noted.

**Question: May an MHA carry over accumulated annual leave when converted to a career employee?**

**Answer: No, currently there are no provisions requiring the Postal Service to allow MHAs to carry over accumulated annual leave upon conversion to a career position.**

**Source: Step 4 Grievance E11M-1E-C 14017686, dated February 8, 2016.**

**Question:** Do part-time regular employees earn annual leave for hours worked in excess of their schedule?

**Answer:** Part-time regular employees are entitled to additional leave hours, based on their leave category, for each 20, 13, or 10 hours of work in excess of their schedule, provided that no more leave is credited to the part-time employee than could be earned in the same leave year by a full-time employee.

Source: Employee and Labor Relations Manual (ELM), Chapter 5, Section 512.312.

Time worked as a casual or temporary employee on or after January 1, 1977 does not count for purposes of determining the rate of annual leave accrual.

Source: Step 4 Grievance A8-C 0520, dated February 1, 1980.

**Time worked as an MHA does not count for purposes of determining the rate of annual leave accrual.**

### **Section 10.3 Choice of Vacation Period**

- A It is agreed to establish a nationwide program for vacation planning for employees in the regular work force with emphasis upon the choice vacation period(s) or variations thereof.

This section establishes a nationwide program for vacation planning for the regular work force and specifically addresses the selection of choice vacation period(s). Article 30, Local Implementation, provides the vehicle for establishing the local leave program. In fact, of the 20 items available for local implementation, 10 involve the creation of a local leave plan.

The local memorandum of understanding usually provides a method for the selection of annual leave for the “choice vacation period” and “other than choice vacation period.” Normally, choice vacation periods, or weeks, are approved based on seniority and “other than choice” is based on first come, first served. Article 30 (Section 30.2) Items C, D, E, F, G, H, I, J, K, and R, pertain to the local leave program. Local implementation is normally conducted shortly after each National Agreement is finalized.

- B Care shall be exercised to assure that no employee is required to forfeit any part of such employee's annual leave.

A bargaining unit employee may carry over up to 440 hours (55 days) of accumulated annual leave from one leave year to the next. The Memorandum of Understanding on Annual Leave Carryover is printed in the National Agreement. Although the memorandum refers to the 1990 National Agreement, it was

renewed as part of the **2016** National Agreement. Any leave remaining beyond the maximum carryover is forfeited by the employee at the beginning of the new leave year.

Supervisors should exercise care to assure that bargaining unit employees do not have to forfeit any part of their annual leave. Supervisors and stewards should encourage bargaining unit employees to be aware of their leave balances to assure that an employee does not end up with excess annual leave.

**C** The parties agree that the duration of the choice vacation period(s) in all postal installations shall be determined pursuant to local implementation procedures.

The duration of the choice vacation period must be of sufficient length to allow bargaining unit employees to request the maximum leave available to them pursuant to Section 10.3D. When addressing Article 30 (Section 30.2) during local implementation consideration must be given to Items E through H and R which formulate the total choice vacation period plan.

The duration of the choice vacation period should largely be determined by the percentage of employees who are to receive choice vacation period leave each week, since Section 10.3 of the National Agreement provides each employee with the opportunity to select 10 to 15 days (2 or 3 weeks) of choice vacation period leave.

**D** Annual leave shall be granted as follows:

**D1** Employees who earn 13 days annual leave per year shall be granted up to ten (10) days of continuous annual leave during the choice period. The number of days of annual leave, not to exceed ten (10), shall be at the option of the employee.

**D2** Employees who earn 20 or 26 days annual leave per year shall be granted up to fifteen (15) days of continuous annual leave during the choice period. The number of days of annual leave, not to exceed fifteen (15), shall be at the option of the employee.

Section 10.3D1 establishes that those employees who have less than three years of creditable service will be granted a maximum of 10 continuous days of annual leave during the choice vacation period. Section 10.3D2 establishes that those employee's with more than three years of creditable service will be granted a maximum of 15 continuous days of annual leave for their choice vacation period selection(s).

**Part-time flexible employees:** Part-time flexible employees may apply for choice vacation period(s) only if they have already been credited with annual leave at the time the application process is closed (ELM, Section 512.61(b)).

D3 The subject of whether an employee may at the employee's option request two (2) selections during the choice period(s), in units of either 5 or 10 working days, the total not to exceed the ten (10) or fifteen (15) days above, may be determined pursuant to local implementation procedures.

Under Article 30 (Section 30.2 Item F), a local memorandum of understanding can determine whether the maximum number of days of continuous annual leave for choice vacation period selection will be requested as a single unit of either 10 or 15 continuous days or as two separate units of either five or 10 continuous days, so long as the total does not exceed the amount to which the individual employee is entitled under Sections .3D1 and D2. For instance, an employee who has 15 days may request 10 continuous days of annual leave in May and five continuous days in August.

D4 The remainder of the employee's annual leave may be granted at other times during the year, as requested by the employee.

This section should be read in conjunction with Section 10.3A and 4C and with any applicable local memorandum of understanding provisions pursuant to Article 30 (Section 30.2, Item K.) It establishes that employees may request annual leave in addition to their selection(s) for choice vacation period(s) (See Section 10.4C).

E The vacation period shall start on the first day of the employee's basic work week. Exceptions may be granted by agreement among the employee, the Union representative and the Employer.

This section establishes that the first day of an employee's choice vacation period(s) shall start on the first day of the employee's basic work week. Exceptions may be granted when the employee, the NPMHU representative and the Employer agree. This section should be read in conjunction with any applicable local memorandum of understanding provisions pursuant to Article 30 (Section 30.2, Item E) which states that the local parties can determine the beginning day of an employee's choice vacation period selection(s). Where the local memorandum of understanding provides that the employee's choice vacation period selection(s) begins on a day other than the first day of an employee's basic work week, the local memorandum of understanding is controlling.

F An employee who is called for jury duty during the employee's scheduled choice vacation period or who attends a National, State, or Regional Convention (Assembly) during the choice vacation period is eligible for

another available period provided this does not deprive any other employee of first choice for scheduled vacation.

This section provides that if an employee serves on jury duty, or attends a National, State, or Regional Convention or Assembly during the employee's scheduled choice vacation period, the employee is entitled to another choice vacation period selection. However, that employee cannot deprive any other employee of their first choice of scheduled vacation. The provisions of this section should be read in conjunction with any applicable local memorandum of understanding provisions pursuant to Article 30 (Section 30.2, Items G and R.) Those items provide for a determination to be made as to whether those absences will be charged to the choice vacation period and whether annual leave for union activities requested prior to the determination of the choice vacation period will be a part of the local vacation plan. (See Article 24, Employees on Leave with Regard to Union Business.)

#### **Section 10.4 Vacation Planning**

The following general rules shall be observed in implementing the vacation planning program:

- A The Employer shall, no later than November 1, publicize on bulletin boards and by other appropriate means the beginning date of the new leave year, which shall begin with the first day of the first full pay period of the calendar year.

The provisions of this section should be read in conjunction with any applicable local memorandum of understanding provisions pursuant to Article 30 (Section 30.2, Item J.) The local installation head must notify all employees of when the new leave year will begin. Where local memorandum of understanding provisions pursuant to Article 30 (Section 30.2, Item J) provide for another date and means of notifying employees, the local memorandum of understanding is controlling.

**Question:** Does the beginning of the new leave year necessarily coincide with the beginning of Pay Period 1?

**Answer:** No. An employee cannot determine to which leave year a request for leave will be charged merely by viewing his/her pay stub.

Source: Step 4 Grievance H1C-4B-C 17039, dated November 10, 1983.

- B The installation head shall meet with the representative of the Union to review local service needs as soon after January 1 as practical. The installation head shall then:

- B1 Determine the amount of annual leave accrued to each employee's credit including that for the current year and the amount expected to be taken in the current year.
- B2 Determine a final date for submission of applications for vacation period(s) of the employee's choice during the choice vacation period(s).
- B3 Provide official notice to each employee of the vacation schedule approved for each employee.

Section 10.4B2 and 3 should be read in conjunction with any applicable local memorandum of understanding provisions pursuant to Article 30 (Section 30.2, Items C and I) which should provide for the following: (1) the final date for employees to submit applications for choice vacation period(s); and (2) how management must give official notice of the approved vacation schedule to each employee.

- C A procedure in each office for submission of applications for annual leave for periods other than the choice period may be established pursuant to the implementation procedure above.

The provisions of this section should be read in conjunction with Sections 10.3A and 10.3D4 and any applicable local memorandum of understanding provisions pursuant to Article 30 (Section 30.2, Item K.) A local memorandum of understanding may specify rules governing other requests for annual leave (other than for the choice vacation period). For example, a bargaining unit employee may win tickets to a Stanley Cup playoff game and request leave to attend. A local memorandum of understanding might specify that such leave requests must be made prior to the Wednesday preceding the week for which the employee is requesting leave. It also might specify how long management has to reply to such requests.

- D All advance commitments for granting annual leave must be honored except in serious emergency situations.

**Question:** Under what circumstances can management cancel previously approved annual leave?

**Answer:** Employees who have annual leave approved are entitled to such annual leave except in emergency situations.

Source: Step 4 Grievances H1N-5D-C 19202/19204, dated June 15, 1984.

**Question:** Can a PTF's previously granted annual leave be unilaterally changed to a non-scheduled day solely to avoid the payment of overtime by making the PTF available for an additional day of work at the straight-time rate?

**Answer:** No.

Source: Step 4 Grievance H1C-5K-C 24208, dated March 5, 1985.

**Question:** Under what circumstances can an employee cancel annual leave that has already been approved?

**Answer:** While not contractually obligated to do so, management should give reasonable consideration to requests for annual leave cancellation, unless otherwise provided in the Local Memorandum of Understanding.

Source: Step 4 Grievance H8N-5C-C 18666, dated September 8, 1981.

**Question:** May employees volunteer to work on non-scheduled days that are in conjunction with approved annual leave?

**Answer:** Normally, employees who are absent are not required nor considered available to work overtime. However, if an employee on the Overtime Desired List so desires, that employee may advise his/her supervisor in writing of his/her availability to work a non-scheduled day that is in conjunction with or part of approved annual leave.

Source: Step 4 Grievance B90M-1B-C 95062381, dated October 15, 1997.

### **Section 10.5 Implementation of the Leave Program**

A If, at the end of the local implementation period provided for in this Agreement, the local parties have not reached agreement on the length of the choice vacation period, the choice vacation period will be 23 consecutive weeks commencing on the last Saturday in April unless the local parties agree to another starting date. The 23 weeks shall include military leave and union leave for conventions and conferences. The method of selecting vacations shall be determined locally.

This automatic selection applies where a Local Memorandum of Understanding (LMOU) does not exist or does not contain language designating the duration of the choice vacation period. Where the choice vacation period is defined in the LMOU, disputes regarding its duration that arise during subsequent local implementation periods would be resolved in keeping with Article 30.

B The vacation sign up list, after the initial sign up period, shall be maintained at a location accessible to employees.

- C After the initial sign up period is completed and vacant weeks still exist on the vacation sign up list, requests for any of these vacant weeks shall be handled as follows:
- C1 The installation head will honor all requests for vacant weeks which are submitted **no less than** seven (7) days in advance of the leave period.
  - C2 The installation head will make every effort to grant requests for vacant weeks submitted less than seven (7) days in advance of the leave period.

**Question:** Must management honor an employee's request under Section 10.5C for additional annual leave during the choice vacation period after the vacation list has been posted and the employee has been approved for his/her full leave entitlement provided in Sections 10.3D1 and D2?

**Answer:** The parties agree that Section 10.5C applies to requests for annual leave in full week increments made by an employee after the initial sign-up period is completed and vacant weeks still exist on the vacation sign-up list, even if the requesting employee has been approved for his/her full leave entitlement provided in Sections 10.3D1 and D2.

Source: Pre-arbitration Settlement D90M-1D-C 95008277, dated February 23, 1999.

- D The installation head's policy in handling requests for emergency leave shall be made known to all employees and the Union. The installation head will consider each such request on the merits of the individual situation. The installation head shall post on the bulletin board the appropriate phone number to call by tour when an emergency arises.

**Emergency Annual Leave:** In an emergency a bargaining unit employee need not obtain advance approval for leave, but must notify management as soon as possible about the emergency and the expected duration of the absence. The employee must submit PS Form 3971 and explain the reason for the absence to the supervisor as soon as possible (ELM, Section 512.412)

### Section 10.6 Sick Leave

The Employer agrees to continue the administration of the present sick leave program, which shall include the following specific items:

- A Credit employees with sick leave as earned.
- B Charge to annual leave or leave without pay (at employee's option) approved absence for which employee has insufficient sick leave

- C Employees becoming ill while on annual leave may have leave charged to sick leave upon request.
- D Unit Charges for Sick Leave and Annual Leave shall be in minimum units of one hundredth of an hour (.01).
- E For periods of absence of three (3) days or less, a supervisor may accept an employee's certification as reason for an absence.
- F Employees may utilize annual and sick leave in conjunction with leave without pay, subject to the approval of the leave in accordance with normal leave approval procedures. The Employer is not obligated to approve such leave for the last hour of the employee's scheduled workday prior to and/or the first hour of the employee's scheduled workday after a holiday.

[See Memos, pages 154-157]

Section 10.6 provides for the continuation of the sick leave program, whose detailed regulations are contained in ELM, Part 513. Section 513.1 defines sick leave as leave which “insures employees against loss of pay if they are incapacitated for the performance of duties because of illness, injury, pregnancy and confinement, and medical (including dental or optical) examination or treatment.” A limited amount of sick leave (up to 80 hours) also may be used to provide for the medical needs of a family member. For specific details, see the MOU Re: Sick Leave for Dependent Care reproduced at the end of this article and ELM, Section 515.

**Question:** May an employee use sick leave during the probationary period?

**Answer:** Yes. A probationary employee may use sick leave that he/she has earned.

**Question:** Are part-time flexible employees guaranteed eight hours of sick leave in a day in which they call in sick?

**Answer:** No. A part-time flexible employee is not guaranteed a set number of hours of sick leave any time requested, but should be paid the number of hours the employee was realistically scheduled to work or would reasonably have been expected to work on a given day.

Source: ELM Chapter 5, Section 513.42

**Question:** May management implement a local tardiness and sick leave policy?

**Answer:** Yes. However, any local attendance program cannot be inconsistent with ELM 510. Additionally, any disciplinary action which results from a local attendance policy must meet the just cause provisions of Article 16 of the National Agreement.

Source: Step 4 Grievances H1N-5D-C 14783/14785, dated December 18, 1983.

**Question:** May local management implement a policy whereby employees are disciplined for using sick leave in excess of a set percentage of their scheduled work hours?

**Answer:** No. The parties agree that discipline for failure to maintain a satisfactory attendance record or for excessive absenteeism must be determined on a case-by-case basis in light of all the relevant evidence and circumstances. Any rule setting a fixed amount or percentage of sick leave usage after which discipline is automatically issued is inconsistent with the National Agreement and applicable handbooks and manuals. Local management will issue no new rules or policies regarding discipline for failure to maintain a satisfactory attendance record or excessive absenteeism that are inconsistent with the National Agreement and applicable handbooks and manuals.

Source: Step 4 Grievance A8-NA-0840, dated January 5, 1981, and **Step 4 Grievance G06M-1G-D 11079627, dated January 16, 2013.**

**Sick leave accrual:** Full- and part-time employees accrue sick leave as shown in ELM, Section 513.21:

513.21 Accrual Chart

Employee Category	Time Accrued
a. Full-time employees	4 hours for each full biweekly pay period—i.e., 13 days (104 hours) per 26-period leave year.
b. Part-time employees	1 hour for each unit of 20 hours in pay status up to 104 hours (13 days) per 26-period leave year.

Sick leave is credited at the end of each pay period and can accumulate without any limitation of yearly carryover amounts (ELM, Section 513.221).

**Question: Do MHAs earn sick leave?**

**Answer: No.**

**Sick leave use:** Bargaining unit employees apply for sick leave, either in advance or after returning to work, by submitting a PS Form 3971. When an employee has an unexpected need for sick leave, he or she must notify the appropriate supervisor as soon as possible of the illness or injury and the expected duration of the absence. Upon returning to work, the employee must submit a PS Form 3971 (ELM, Section 513.332).

**Question:** Can management require employees to complete PS Form 3971 prior to clocking in?

**Answer:** No. The parties have agreed that completion of PS Form 3971 “upon returning to duty,” as stated in ELM Section 513.332, means while the employee is on-the-clock.

Source: Step 4 Grievance H1C-3W-C 48121, dated September 3, 1985.

Sick leave is paid at the employee’s regular straight-time rate, and limited to maximums of eight hours per day, 40 hours per week and 80 hours per pay period (ELM, Section 513.421(b)). Full-time employees may request paid sick leave on any scheduled workday of the employee’s basic workweek (ELM, Section 513.411). Part-time employees receive sick leave in accordance with ELM, Section 513.42, which provides:

#### 513.42 Part-Time Employees

##### 513.421 General

General provisions are as follows:

- a. Absences due to illness are charged as sick leave on any day that an hourly rate employee is scheduled to work except national holidays.
- b. Except as provided in 513.82, paid sick leave may not exceed the number of hours that the employee would have been scheduled to work, up to:
  - (1) A maximum of 8 hours in any one day.
  - (2) 40 hours in any one week.
  - (3) 80 hours in any one pay period. If a dispute arises as to the number of hours a part-time flexible employee would have been scheduled to work, the schedule is considered to have been equal to the average hours worked by other part-time flexible employees in the same work location on the day in question.

- c. Limitations in 513.421b apply to paid sick leave only and not to a combination of sick leave and workhours. However, part-time flexible employees who have been credited with 40 hours or more of paid service (work, leave, or a combination of work and leave) in a service week are not granted sick leave during the remainder of that service week. Absences, in such cases, are treated as nonduty time that is not chargeable to paid leave of any kind. (Sick leave is not intended to be used to supplement earnings of employees.)

**Question:** If a part-time flexible employee is scheduled to work and calls in sick, may their day off be changed and no sick leave be paid?

**Answer:** No. If the part-time flexible employee is scheduled and calls in sick, then sick leave is paid based on the number of hours the part-time flexible employee would have worked. If the part-time flexible employee has already been credited with 40 hours or more of paid service, then sick leave may not be granted for the rest of the service week.

Source: ELM Chapter 5, Section 513.421.

ELM, Section 513.65 provides, "If an employee becomes ill while on annual leave and the employee has a sick leave balance, the absence may be charged to sick leave." See also Section 10.6C.

**Question:** Can a disabled veteran be disciplined for using sick leave while receiving treatment at a VA hospital?

**Answer:** The parties agree that Executive Order 5396, dated July 3, 1930, applies to the Postal Service and that absences meeting the requirements of that decree cannot be used as a basis for discipline. Granting of leave under the Executive Order is contingent upon the veteran providing prior notice of the times of absences that are required for medical treatment.

Source: Step 4 Grievance H4N-4F-C 11641, dated October 28, 1988.

**Sick leave authorization:** The conditions for authorization of sick leave are outlined in Section 513.32 of the ELM. When a request for sick leave is disapproved, the supervisor must check the block "Disapproved" and write the reason(s) on the PS Form 3971, and note any alternative type of leave granted (ELM, Section 513.342). If sick leave is disapproved and the absence is nonetheless warranted, the supervisor may approve, at the employee's option, annual leave or LWOP (ELM, Section 513.63).

If the employee does not have sufficient sick leave to cover the absence, at the option of the employee any difference may be charged to annual leave and/or

LWOP (ELM, Section 513.61). Likewise, if the employee does not have any sick or annual leave for an approved absence, the approved absence may be charged to LWOP (ELM, Section 513.62). See also Section 10.6B.

**Question:** Must management pay an employee for all time spent to undergo a fitness for duty exam at the employer's request or can charging such time to an employee's annual leave constitute such payment?

**Answer:** Time spent by an employee waiting for and receiving such medical attention at the direction of the employer constitutes hours worked. Therefore, employees shall be carried in an official duty pay status for all such time involved.

Source: Step 4 Grievance A8-E-0477, dated January 30, 1980.

**Medical certification:** ELM, Sections 513.361 and 513.362 establish three rules:

- a. For absences of more than three days, i.e., three scheduled work days, an employee must submit "medical documentation or other acceptable evidence" in support of an application for sick leave; and
- b. For absences of three days or less a supervisor may accept an employee's application for sick leave without requiring verification of the employee's illness (unless the employee has been placed in restricted sick leave status, in which case verification is required for every absence related to illness regardless of the number of days involved); however
- c. For absences of three days or less a supervisor may require an employee to submit documentation of the employee's illness "when the supervisor deems documentation desirable for the protection of the interests of the Postal Service."

A number of disputes have occurred when a supervisor required an employee, who was not on restricted sick leave, to provide medical documentation for an illness or injury of three days or less. It is understood that the supervisor's request for medical documentation cannot be arbitrary, capricious, or unreasonable.

In a 2007 National-level Step 4 agreement, the parties addressed whether the use of the "Deems Desirable Option" in the RMD/eRMS, violates the National Agreement, Chapter 510 of the ELM and various Step 4 agreements. The parties agreed as follows: "[I]f a supervisor determines that medical documentation or other acceptable evidence of incapacitation is desirable for the protection of the Postal Service it must be made on a case by case basis, must be consistent with the provisions of ELM 513.361 and may not be arbitrary, capricious or unreasonable."

Source: Step 4 Grievance A00M-1A-C 06143989, dated May 3, 2007.

A blanket management order requiring medical documentation or other acceptable evidence of incapacity to work from all employees who call-in on a particular day, regardless of individual circumstances, goes beyond the intent of Part 513.361 of the Employee & Labor Relations Manual and should not be used.

Source: Step 4 Grievance H1C-1N-C-1301, dated April 19, 1982.

**Question:** Does a medical unit nurse have the authority to require an employee to provide medical documentation prior to returning to work?

**Answer:** No, however a medical unit nurse may recommend to a supervisor that he or she require an employee to submit medical documentation when such documentation is deemed necessary to protect the interests of the Postal Service.

Employees who are on extended periods of sick leave must submit at regular intervals, but not more frequently than once every 30 days, satisfactory evidence of their continued inability to perform their regular duties, unless “some responsible supervisor has knowledge of the employee’s continuing situation” (ELM, Section 513.363).

**Question:** Can medical documentation provided by a naturopath be presented to substantiate a need for sick leave?

**Answer:** Yes. Acceptable medical documentation must be furnished by the employee’s attending physician or other attending practitioner. A naturopath is considered to be an attending practitioner.

Source: Step 4 Grievance H1N-5D-C 29943, dated June 18, 1985.

A licensed chiropractor performing within the scope of his/her practice is also considered to be an attending practitioner.

**Question:** Do the requirements of ELM Section 513.364 mean that the medical documentation itself must be generated by the doctor?

**Answer:** No. The ELM contains no prohibition against the submission of pre-printed forms; however, it is understood that any medical documentation or other acceptable evidence submitted must meet the requirements set forth in the ELM.

Source: Step 4 Grievance H4C-3A-C 15991, dated December 19, 1986.

**Question:** Must the signature of the doctor or attending practitioner appear on the medical certificate?

**Answer:** No. Rubber stamped and/or facsimile signatures are acceptable. Additionally, an authorized staff member, including a nurse, may complete and sign a document under instruction from the attending physician or practitioner. These forms of documentation may be subject to verification on a case-by-case basis.

Source: Step 4 Grievances H1C-3T-C 40742, dated May 2, 1985, and H1C-NA-C 113, dated September 6, 1984.

**Question:** Must the medical documentation cover the entire period of the absence?

**Answer:** The parties have agreed that normally the medical documentation should cover the entire period. However, supervisors may accept proof other than medical documentation if it supports approval of the sick leave application.

Source: Step 4 Grievance H1C-3W-C 22219, dated September 14, 1983.

**Question:** What information should be included in medical documentation?

**Answer:** The documentation should include an explanation of the nature of the employee's illness or injury sufficient to indicate that the employee was or will be unable to perform his or her normal duties during the period of absence. Normally, statements such as "under my care" or "received treatment" are not acceptable evidence of incapacitation. Medical information that includes a diagnosis and a medical prognosis is not necessary to approve leave. If medical documentation containing a diagnosis and/or medical prognosis is received by a supervisor, it must be forwarded to the health unit or office of the contract medical provider and treated as a "restricted medical record" under Section 214.3 of Handbook EL-806.

Source: Memorandum from National Medical Director D.H. Reid III, dated June 22, 1995.

**Question:** How should management handle review of medical documentation submitted by an employee returning to duty after an extended absence due to illness?

**Answer:** To avoid undue delay in returning an employee to duty, the on-duty medical officer, contract physician, or nurse should review and make a decision based upon the presented medical documentation on the same day that it is submitted. Normally, the employee will be returned to work on his/her next workday provided that adequate medical documentation is submitted within sufficient time for review. The reasonableness of the employer's delay in

returning such an employee to duty beyond his/her next workday is subject to the grievance-arbitration procedure on a case-by-case basis.

Source: Step 4 Grievances H4C-4A-C 34162/34163, dated December 16, 1987.

**The parties at the National Level signed a February 10, 2014 pre-arbitration settlement stating as follows:**

**“The current ELM 865 language does not negate management’s obligation under the MOU on Return to Duty when returning an employee to duty after an absence for medical reasons.**

**“The reasonableness of the Service in delaying an employee’s return beyond his/her next scheduled tour of duty or the date stated in the medical documentation shall be a proper subject for the grievance procedure on a case-by-case basis.”**

**Source: Pre-arbitration Settlement Q00M-6Q-C 05099748 and Q06M-6Q-C 11100872, dated February 10, 2014.**

**Question: Is it mandatory for an employee to provide FMLA documentation within 15 days of the receipt of the request?**

**Answer: Yes, unless it is not practicable under the particular facts and circumstances.**

**Question: In order to qualify as a serious health condition, under the provisions of ELM 515.2.i.(2)(a), does the employee have to have treatment two or more times by a health care provider within 30 days of the first day of incapacity?**

**Answer: Yes, unless extenuating circumstances prevent the employee from a follow-up visit occurring within 30 days of the first day of incapacity. At the same time, other provisions of ELM 515.2(i) include other means to show a serious health condition.**

**Question: Are employees always required to submit complete and sufficient medical certification to establish a serious health condition as defined under the FMLA?**

**Answer: Yes, but this responsibility is not triggered until the employee receives a request for certification from the Postal Service.**

**Source: Pre-arbitration Settlement Q00M-6Q-C 05099748 and Q06M-6Q-C 11100872, dated February 10, 2014.**

**Restricted Sick Leave:** Management may place an employee in “restricted sick leave” status, requiring medical documentation to support every application for sick leave, if: (a) management has “evidence indicating that an employee is abusing sick leave privileges”; or (b) if management reviews the employee’s sick leave usage on an individual basis, first discusses the matter with the employee, and otherwise follows the requirements of ELM, Section 513.39.

**Question:** May management create a list of employees who are required to provide medical documentation for all unscheduled absences in lieu of utilizing the restricted sick leave procedures found in ELM, Section 513.39?

**Answer:** No. A “call-in” list of employees that are automatically required to provide medical documentation for all unscheduled absences, even though the employees are not on restricted sick leave, should be abolished.

Source: Pre-arbitration Settlement H1C-3D-C 37622, dated June 3, 1985.

**Advance Sick Leave:** Up to 30 days (240 hours) of sick leave may be advanced to an employee with a serious disability or ailment if there is reason to believe the employee will return to duty (ELM, Section 513.511). The USPS installation head has authority to approve such requests. An employee need not use up all annual leave before receiving advance sick leave.

**Sick Leave for Dependent Care:** This Memorandum of Understanding enables a bargaining unit employee to use earned sick leave for a new purpose: caring for an ailing family member.

An employee's right to Sick Leave for Dependent Care is separate and different from the right to leave under the Family and Medical Leave Act of 1993. Sick Leave for Dependent Care is a benefit established by the Memorandum of Understanding; FMLA is a federal law affecting almost all employers and employees in this nation. Still, while there are important differences, there are certain similarities. For instance, the definitions of son, daughter, spouse and parent used for Sick Leave for Dependent Care are the same as the FMLA definitions. An employee may take time off to care for the same person under both Sick Leave for Dependent Care and FMLA.

**Minimum Charge for Leave:** The one hundredth of an hour minimum leave usage amount means, for example, that an employee who obtains advance approval for two (2) to three (3) hours of sick leave for a doctor’s appointment and who returns to work and clocks in after two (2) hours and 37 minutes, will be charged only for the amount of sick leave actually used, rounded to the hundredth of an hour.

**Leave Without Pay:** An employee may request unpaid time off - leave without pay (LWOP) -- by submitting a PS Form 3971. If the request for LWOP is for

more than 30 days, the application must contain a written statement giving the reason for the requested LWOP absence (ELM, Section 514.51).

As a general rule, management may grant LWOP as a matter of administrative discretion. There are certain exceptions concerning disabled veterans, military reservists, members of the National Guard, and employees who request and are entitled to time off under the Family and Medical Leave Act (FMLA), as outlined in ELM, Section 515, Absence for Family Care or Serious Health Condition of Employee. See ELM, Section 514.22 for more information.

An employee may use LWOP in lieu of sick or annual when the employee requests and is entitled to time off under ELM 515 or the FMLA.

Source: Pre-arbitration Settlement C90C-4Q-C 95048663, dated April 20, 1999.

The Memorandum of Understanding Re: LWOP in Lieu of SL/AL, reprinted at the end of this article, establishes that an employee need not exhaust annual leave and/or sick leave before requesting leave without pay. See ELM, Exhibit 514.4(d).

**Question:** Can an employee's use of LWOP impact their ability to earn annual and/or sick leave?

**Answer:** Yes. Employees who are on LWOP for a period, or periods, totaling 80 hours (the normal number of workhours in one pay period) during a leave year have their leave credits reduced by the amount of leave earned in one pay period. There is an exception for employees in leave category 6 who are not on LWOP for the entire year and whose accumulated LWOP reaches 80 hours in the last pay period in the leave year; these employees have their leave balance reduced by only six hours, even if they earn 10 hours during that pay period.

Source: ELM Chapter 5, Section 514.24.

**Military Leave:** ELM Section 517 contains provisions regarding authorized absence from duty granted to eligible employees who are members of the National Guard or Reservists of the armed forces.

**Question:** Are only full-time employees eligible for military leave?

**Answer:** No. Full-time career employees are granted up to 15 days of military leave per fiscal year and part-time employees are granted one (1) hour of military leave for each 26 hours in a pay status in the preceding fiscal year.

Source: ELM Chapter 5, Section 517.41.

**Question: Are MHAs eligible for military leave?**

**Answer: No. MHAs are permitted to be absent but are not eligible for paid military leave.**

**Source: ELM Chapter 5, Section 517.22.**

**Question:** Can full-time employees take more than 15 days of military leave within a particular fiscal year?

**Answer:** Yes. Employees are allowed, if they have official orders for training or responsibilities beyond the 15 days, to take annual leave or LWOP at their discretion for the amount of time necessary.

Source: ELM Chapter 5, Section 517.61.

**Administrative Leave:** Administrative Leave is governed by the provisions of Section 519 of the ELM. It is defined as absence from duty authorized by appropriate postal officials without charge to annual or sick leave and without loss of pay. The ELM authorizes administrative leave under certain circumstances for various reasons such as civil disorders, state and local civil defense programs, voting or registering to vote, blood donations, attending funeral services for certain veterans, relocation, examination or treatment for on-the-job illness or injury and absence from duty due to “Acts of God.”

**Question: Are MHAs eligible for Blood Donor Leave?**

**Answer: No.**

National Arbitrator Parkinson has ruled that “employees placed on administrative leave shall be paid night differential if they would have otherwise been eligible/entitled to such differential had they not been placed on administrative leave.”

Source: National Arbitration Award J90M-1J-C 95047374, Arbitrator P. Parkinson, dated December 8, 2000.

**Question:** What is an “Act of God?”

**Answer:** “Acts of God” involve community disasters such as fire, flood, or storms. The disaster situation must be general rather than personal in scope and impact and must prevent groups of employees from working or reporting for work.

Source: ELM Chapter 5, Section 519.211.

**Question:** How much administrative leave does an employee receive if released from work before the normal completion of his/her tour of duty as a result of an “Act of God?”

**Answer:** Full-time and part-time regular employees are credited for the hours worked, plus enough administrative leave to complete their scheduled hours of duty. The total cannot exceed eight hours in any one service day.

Part-time flexible employees are credited for the hours worked, plus enough administrative leave to complete their scheduled work hours. The total cannot exceed eight hours in any one service day. If there is a question as to the scheduled work hours, the part-time flexible is entitled to the greater of: the number of hours worked on the same service day in the previous service week; the number of hours scheduled to work; or the number of hours guaranteed under the National Agreement.

Source: ELM Chapter 5, Section 519.214.

**Continuation of Pay:** Under the provisions of the Postal Reorganization Act, 39 U.S.C. §1005(c), all employees of the Postal Service are covered by the Federal Employees’ Compensation Act (FECA), 5 U.S.C. §§ 8101 et seq.

**Court Leave:** The following is a reprint of the definition of Court Leave contained in the ELM, Section 516.121:

*Court leave* is the authorized absence from work status (without loss of or reduction in pay, leave to which otherwise entitled, credit for time or service, or performance rating) of an employee who is summoned in connection with a judicial proceeding, by a court or authority responsible for the conduct of that proceeding, to serve as a juror, as a witness in a nonofficial capacity on behalf of a state or local government, or as a witness in a nonofficial capacity on behalf of a private party in a judicial proceeding to which the Postal Service is a party or the real party in interest. The court or judicial proceeding may be located in the District of Columbia, a state, territory, or possession of the United States, including the Commonwealth of Puerto Rico, or the Trust Territory of the Pacific Islands.

Before deciding whether an employee is entitled to court leave, management must first determine whether the employee will be in official duty status. Under ELM, Section 516.11, employees are on official duty status, and not on court leave, when serving as a witness on behalf of the United States or District of Columbia governments in an official or nonofficial capacity or when serving as a witness in their official capacity on behalf of a state or local government or a private party.

Source: ELM Chapter 5, Sections 516.11 and 516.51.

**Question:** Is an employee performing official duty when subpoenaed by the National Labor Relations Board to testify as a witness in any capacity?

**Answer:** Such an employee is performing official duty during the period in which they are summoned to testify or produce official records on behalf of the National Labor Relations Board, which is an agency of the United States. This position applies regardless of whether the testimony is favorable to, adverse to, or unrelated to the Postal Service.

Source: Step 4 Grievance A8-W-0046, dated August 28, 1979.

National Arbitrator Gamser, in a case decided in October, 1980, found that the parties in Philadelphia had agreed that the language in the ELM permitted employees to change their days off so as to have their temporary work schedule coincide with their days in court and their non-scheduled days coincide with the days in the week on which they were not required to be in court. He further ruled that management did not have the right to make any unilateral change in the consistent past practice given evidence of the accepted interpretation of those provisions of the ELM without following the procedure outlined in the second paragraph of Article 19 in order to effectuate such a change.

Source: National Arbitration Award N8-E 0088, Arbitrator H. Gamser, dated October 3, 1980.

The following cases were settled in pre-arbitration citing Arbitrator Gamser's award in N8-E 0088:

A8-N-0383/N8C-1J-C 3922 decision dated October 30, 1981.

H8C-4F-C 24183 decision dated October 30, 1981.

A8-W-0641/W8C-5F-C 8400 decision dated November 10, 1981.

A8W-0300/W8C-5F-C 4670 decision dated November 10, 1981.

The question in these grievances was whether or not management violated Article 10 of the National Agreement by not allowing an employee to voluntarily change his work schedule to coincide with the days the employee was required to be in court under the circumstances that would make him eligible for court leave.

The parties mutually agreed, in accord with Arbitrator Gamser's decision, that where it is established in an appropriate proceeding that management of an installation has consistently interpreted the provisions of the ELM and the related provisions of any earlier manual, regulation, or the Federal Personnel Manual, to allow employees to change their work days, as well as their work hours, to coincide with the court circumstances above, management must continue such practice or revert to such practice until and unless a change in the provisions of

the ELM is made pursuant to the procedure in Article 19 of the National Agreement.

**Question:** Are part-time flexible employees entitled to court leave?

**Answer:** Yes, under the conditions defined in the Memorandum of Understanding Re. Part-time Flexible Court Leave, reprinted hereunder.

**Question:** Are MHAs entitled to court leave?

**Answer:** No. MHAs are not entitled to court leave and must use either annual leave or LWOP to cover the period of absence from postal duties for court service.

**Source:** ELM Chapter 5, Section 516.22

For many years, the NPMHU and the Postal Service have had ongoing discussions about the application of changing regulations issued by the U.S. Department of Labor under the Family and Medical Leave Act.

Regulations issued on February 25, 2015 and reprinted at 80 Fed. Reg. 9,989 (Feb. 25, 2015) revised the definition of “spouse” to include all legally married spouses as recognized under State law for purposes of marriage in the State where the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This regulation therefore expands the availability of FMLA leave to legally married same-sex spouses regardless of the State in which they reside.

In addition, new FMLA leave entitlements for military families were included in the National Defense Authorization Acts for Fiscal Years 2008 and 2010, which created two new categories of leave: qualifying exigency leave and military caregiver leave. Employees are entitled to up to 26 weeks of leave in a single 12-month period to care for covered service members who suffer a serious injury or illness in the line of duty while on active duty. Employees are also entitled to 12 weeks of FMLA leave for a qualifying exigency arising out of the fact that a military member is on covered active duty or is called to covered active duty status. The final regulations implementing these two statutes can be found at 73 Fed. Reg. 67,934 (Nov. 17, 2008) and 78 Fed. Reg. 8,834 (Feb. 6, 2013). The Postal Service’s policy concerning FMLA, including military caregiver and qualifying exigency leave, may also be found in ELM § 515.

**Leave under the Family and Medical Leave Act:** The Family and Medical Leave Act of 1993 (FMLA) is a law that entitles eligible employees to an accumulative total of up to 12 workweeks of job-protected absence within a

Postal Service leave year **(or 26 workweeks in a single 12-month period for military caregiver leave)** for one or more of the following:

- The birth of the employee's child and to care for that child during the first year after birth. Circumstances may require that FMLA leave begin before the actual date of birth of a child, i.e., for prenatal care or if the mother's condition prevents her from performing the functions of her position.
- The placement of a child with the employee for adoption or foster care. The employee may be entitled to FMLA leave before the actual placement or adoption of a child when, for example, the employee is required to attend counseling sessions, appear in court, or consult with attorneys or doctors representing the birth parent prior to placement. FMLA coverage expires one year after the date of the placement.
- To care for the employee's spouse, son, daughter, or parent with a serious health condition. This requires medical certification that an employee is "needed to care for" a family member and encompasses both physical and psychological care.
- Because of a serious health condition that makes the employee unable to perform the functions of the employee's job. An employee is "unable to perform the functions of the position" when the health care provider finds that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee's position.
- **To care for covered service members who suffer a serious injury or illness in the line of duty while on active duty, as defined in the FMLA regulations and ELM § 515.**
- **For a qualifying exigency arising out of the fact that a military member is on covered active duty or is called to covered active duty status, as defined in the FMLA regulations and ELM § 515.**

For the purposes of the FMLA, the following definitions apply:

A **parent** is defined as a biological parent or an **individual who stands *in loco parentis***. **Someone may stand *in loco parentis* if he or she acts** as a parent toward a son or daughter, with day to day responsibilities to care for **or** financially support a child, or a person who had such responsibility for the employee when the employee was a child.

A **spouse** is defined **as all legally married spouses as recognized under State law for purposes of marriage in the State where the marriage was entered into or, in the cases of a marriage entered into outside of any State, if the marriage is valid in the place where**

**entered into and could have been entered into in at least one State, including same-sex or common law marriage in States where it is recognized.**

**The Postal Service will recognize same-sex spouses who have legally married in a jurisdiction that permitted same-sex marriages, regardless of where they currently live or work, for purposes of family member definitions under Postal Service relocation and leave programs.**

**Source: Letter from Manager, Policy and Programs, Alan S Moore dated July 10, 2013.**

**A son or daughter is defined as biological, adopted, foster, *in loco parentis* (defined above under definition of parent), legal ward or step child under the age of 18; or a child 18 or over who has a disability as defined under the **Americans with Disabilities Act or Rehabilitation Act** and the disability makes the person incapable of self-care, **regardless of when the disability commenced.****

Disability under the **Americans with Disabilities Act or Rehabilitation Act** is defined as an impairment which substantially limits a major life activity. A major life activity does not include things like cooking or cleaning, but instead, the more fundamental and basic activities central to a person's life: e.g., seeing, breathing, hearing, eating, walking, standing, speaking and learning. **The operation of a major bodily function is also considered a major life activity, for example, the operation of one's immune, circulatory, reproductive, digestive, bowel, brain, neurological and/or respiratory system. An individual must be (or have been) substantially limited in performing a major life activity as compared to most people in the general population in order to have a disability. Determining whether an impairment "substantially limits" an individual from performing a major life activity requires an individualized assessment comparing the person's ability to perform a major life activity as compared to most other people in the general population.** This includes consideration of the nature and severity of the impairment, its duration, and permanent or long term impact of the impairment. **An impairment with only minor or moderate effects will not constitute a disability. However, the effects of an impairment expected to last six months or less can still be substantially limiting if sufficiently severe. Furthermore, conditions which are episodic or in remission are disabilities if they would substantially limit a major life activity.**

"Incapable of self-care" is the need for assistance or supervision to provide daily care in 3 or more "activities of daily living": grooming,

bathing, eating, hygiene, cooking, cleaning, paying bills, using a phone or post office, and shopping.

There is no “laundry list” of serious health conditions. Other than pregnancy, the circumstances determine whether a condition is serious, not the diagnosis. Therefore, every request for FMLA leave must be considered on a case-by-case basis, applying the definitions of a serious health condition, as defined by the statute and regulations, to the information provided by the employee and the employee’s health care provider. Management **has the right** to ask employees about the circumstances of their condition in order to determine whether absences may be protected under the FMLA and/or whether absences are for a condition which requires the ELM’s return to work procedures.

**Qualifying exigency leave. The Postal Service must grant an eligible employee up to 12 workweeks of FMLA leave during the 12-month FMLA leave period for qualifying exigencies that arise out of the fact that the employee’s spouse, son, daughter, or parent, who is a member of the Regular Armed Forces, National Guard, Reserves, or a retired member of the Regular Armed Forces or Reserves, is under a call or order to covered active duty (or notification of an impending call or order to covered active duty) during the deployment of the member with the Armed Forces to a foreign country. For those military members in the National Guard or Reserves, the call to active duty must also be in support of a contingency operation.**

**For purposes of qualifying exigency leave, the 12-month period is the postal leave year that the Postal Service has established for the other categories of FMLA leave. Qualifying exigencies that may arise out of the covered military member’s covered active duty or call to covered active duty include:**

- **Short Notice Deployment**
- **Post-deployment activities**
- **Military event or related activity**
- **Counseling**
- **Childcare and school activity**
- **Rest and recuperation**
- **Financial or legal arrangements**
- **Parental care**
- **Additional activities arising from the call to duty (provided the employer and employee agree that the leave qualifies as an exigency and agree on the timing and duration of the leave).**

**Military caregiver leave.** The Postal Service must grant an eligible employee who is a spouse, son, daughter, parent, or next of kin of a covered service member or covered veteran with a serious injury or illness up to a total of 26 workweeks of leave during a single 12-month period to care for the covered service member or covered veteran. While the 12-month period for every other category of FMLA leave coincides with the postal leave year, the 12-month period for military caregiver leave begins on the date that the eligible employee first takes military caregiver leave.

A "covered service member" is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is receiving medical treatment, recuperation, or therapy, or is in outpatient status, or is on the temporary disability retired list for a serious injury or illness. A "serious injury or illness" is one incurred by a service member in the line of duty while on active duty that may cause the service member to be medically unfit to perform the duties of his or her office, grade, rank, or rating. A serious injury or illness also includes injuries or illnesses that existed before the service member's active duty that were aggravated by service in the line of duty on active duty.

A "covered veteran" is a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness and:

- served in the Armed Forces (including a member of the National Guard or Reserves);
- was discharged or released under conditions other than dishonorable;
- was discharged within the five-year period before the eligible employee first takes FMLA military caregiver leave to care for him or her.

For covered veterans, a "serious injury or illness" is an injury or illness that was incurred by the covered veteran in the line of duty on active duty in the Armed Forces or one that existed before the veteran's active duty and was aggravated by service in the line of duty on active duty, and that is:

- I. a continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of the service member's office, grade, rank, or rating; *or*

2. **a physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and the rating is based at least in part on the condition for which caregiver leave is needed; or**
3. **a physical or mental condition that substantially impairs the veteran's ability to work due to the condition, or would do so absent treatment; or**
4. **an injury that is the basis for the veteran's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.**

**Any *one* of these definitions meets the FMLA's definition of a serious injury or illness for a covered veteran regardless of whether the injury or illness manifested before or after the individual became a veteran.**

**The FMLA has created several separate definitions of family members for both categories of military family leave.**

**Son or daughter, for the purposes of qualifying exigency leave, means the employee's biological, adopted, foster child, stepchild, legal ward, or a child for whom the employee stood *in loco parentis*, who is on covered active duty or call to covered active duty status, and who is of any age.**

**Son or daughter of a covered service member, for purposes of military caregiver leave, is the service member's biological, adopted or foster child, stepchild, legal ward, or a child for whom the service member stood *in loco parentis*, and who is of any age.**

**Parent of a covered service member, for purposes of military caregiver is a covered service member's biological, adoptive, step or foster parent, or any other individual who stood *in loco parentis* to the covered service member.**

**Next of kin of a covered service member, for purposes of military caregiver leave is the nearest blood relative, other than the covered service member's spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his/her nearest blood relative for purposes of military caregiver leave under FMLA.**

**Eligibility Requirements:** Any career or non-career employees who meet the eligibility requirements may take FMLA leave if they meet the eligibility requirements at the time the leave starts; that is, the employee must have been employed by the Postal Service for at least 12 months (this time does not have to be consecutive, but generally must have been worked within the past seven years) and the employee **must** have completed at least 1,250 work hours during the 12-month period immediately preceding the date the leave starts.

The 1,250 work hours includes overtime, but excludes any paid or unpaid absence, except for absences due to military service. LWOP, including union LWOP, does not count toward the 1,250 work hour eligibility requirement. However, authorized steward time on the clock, during the course of the employee's regular schedule, is credited toward the required 1,250 hours for FMLA eligibility. Union LWOP does not count toward the 1,250 workhour eligibility requirement.

Source: Letter, A.J. Vegliante, Manager, Contract Administration, dated December 12, 1995.

**Question: Are MHAs eligible for FMLA protected leave?**

**Answer: Yes, MHAs who meet eligibility requirements – employment with the USPS for an accumulated total of 12 months over the past 7 years (including any prior career or non-career service) and have worked a minimum of 1,250 hours (including any prior career and non-career service) during the 12 month period immediately preceding the date the leave begins – are eligible for FMLA protected leave.**

**Military Service.** The Postal Service will credit any period of military service as follows:

- Each month served performing military service counts as a month actively employed by the employer for the purpose of determining the 12 months of employment requirement.
- The hours that would have been worked for the employer, based on the employee's work schedule prior to the military service, are added to any hours actually worked during the previous 12-month period to determine if the employee meets the 1,250 work hour requirement. The hours the employee would have worked will be calculated in the same manner as back pay calculation, found in Section 436 of the Employee and Labor Relations Manual (ELM).

**Calculating the 1,250 work hour eligibility - per condition, per leave year.**

The employer defines the FMLA leave year. In the Postal Service, FMLA leave is calculated on the basis of the postal leave year.

The 1,250 work hour eligibility test is applied only once, at the beginning of a series of intermittent absences, if all absences are for the same FMLA-qualifying condition during the same 12-month leave year. The employee remains eligible throughout that leave year even if subsequent absences bring the employee below the 1,250 work hour requirement.

If an employee has a different **FMLA qualifying** condition during the leave year, the employee must meet the 1,250 work hour eligibility test at the commencement of the leave for the second condition. If the employee does so, he/she is eligible for FMLA protection of absences for both conditions for the remainder of the leave year, or until the 12-week entitlement has been exhausted **(or 26-week entitlement in the case of military caregiver leave)**.

However, if the employee is unable to meet the 1,250 work hour requirement for the second condition in the leave year, the employee is NOT entitled to FMLA protection for the second condition, but remains entitled to FMLA protection for the first condition for the remainder of the leave year or until the 12-week entitlement has been exhausted. Therefore, it is possible for this employee to be eligible for FMLA protection of one qualifying condition, but not for the second and different **qualifying** condition.

The 1,250 work hour eligibility requirement must be re-calculated at the commencement of each subsequent and separate **qualifying** condition for which the employee needs leave, in order to determine eligibility for each condition in each leave year.

Source: Step 4 Grievance C98M-1C-C 99211556, dated October 2, 2001; Memorandum from D.A. Tulino, Manager, Labor Relations Policies and Programs, dated November 14, 2000.

The 1,250 work hour eligibility requirement is re-calculated upon the first absence in the new leave year, related to the FMLA certified condition. However, this does not **necessarily** mean that the employee is required to re-certify the condition. The certification from the previous leave year remains valid for the duration indicated by the health care provider, unless management requires a **new leave year certification** in accordance with the provisions of the statute or regulations.

**Question:** Are employees automatically required to provide certification for their serious health conditions every year?

**Answer:** No. **Employees are not automatically required to provide certification every leave year for a serious health condition. However, if an**

**employee's need for leave due to the employee's own serious health condition, or the serious health condition of the employee's covered family member, lasts beyond a single leave year, then the Postal Service may require the employee to provide a new medical certification in conjunction with an absence in the new leave year. Such new medical certifications are subject to the provisions for authentication and clarification set forth in 29 CFR Section 825.307, including second and third opinions.**

**Question:** Are LWOP hours converted to paid hours as a result of a grievance settlement or arbitration decision returning an employee to duty counted towards the 1,250 hours eligibility criteria for the FMLA?

**Answer:** Yes. When an employee is awarded back pay accompanied by equitable remedies (i.e., full back pay with seniority and benefits, or a "make whole" remedy), the hours the employee would have worked if not for the action that resulted in the back pay period are counted as work hours for the 1,250 work hour eligibility requirement under the FMLA.

Source: Step 4 Grievance I98M-11-C 00089905, dated August 15, 2002.

**Employee Rights:** The Postal Service leave year begins with the first full pay period in a calendar year and ends with the start of the next leave year. Up to 12 workweeks of annual leave, sick leave, LWOP, or a combination of these, depending on the situation, may be used for FMLA-covered conditions. **Eligible employees who take FMLA protected leave for a covered service member who has incurred a serious injury or illness are entitled to 26 workweeks of annual leave, sick leave, LWOP or a combination of these, depending on the situation.** An employee may use LWOP in lieu of sick or annual leave when an employee requests and is entitled to time off under ELM 515, Absences for Family Care or Serious Health Problem of Employee (policies to comply with the Family and Medical Leave Act). The leave may be taken in a single block of time, in separate blocks, or intermittently depending on the condition and the medical necessity for the leave. The FMLA requires employees to make a reasonable effort to schedule **foreseeable** intermittent or reduced leave in a way that will not unduly disrupt workplace operations. **Employees are ordinarily expected to consult with their employers prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the employer and the employee.**

The right to take leave under FMLA applies equally to male and female employees. For example, a father, as well as a mother, may take FMLA for the placement for adoption or foster care, or to care for a child during the 12 months following the date of birth or placement.

On return from an FMLA absence, an employee is entitled to be returned to the

same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

**Employer Responsibilities.** The employer is prohibited from interfering with, restraining, or denying the exercise of any rights provided by the Act. Employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions. Likewise, FMLA-covered absences may not be used towards any disciplinary actions. Employees cannot waive, nor may employers induce employees to waive, their rights under FMLA.

Employers must post and keep posted Wage and Hour Publication 1420, Your Rights under the Family and Medical Leave Act of 1993. The employer is also required to notify the employee within **5** business days of learning of the employee's need for leave, **whether the employee is eligible for FMLA leave and whether the** absence is designated as FMLA leave, the type of leave charged (annual, sick, LWOP), and/or any additional documentation the employee needs to furnish. In the Postal Service, this notification requirement is met by providing the employee a copy of the PS Form 3971.

Under the federal statute and regulations, an employee may request or the employer may require the substitution of paid leave for the 12 or 26 workweeks (12 or 26 times the employee's normal scheduled hours per week, up to 40 hours) of unpaid absence per year in accordance with normal leave policies and bargaining unit agreements. However, under Postal Service policy, an employee may use LWOP for an FMLA-covered absence.

**Employee Responsibilities.** The following are the employee's responsibilities when a request for FMLA leave is submitted:

- When the need for leave is foreseeable (e.g., pregnancy) notify management of the need for leave and provide appropriate supporting documentation at least 30 days before the absence is to begin. **If the need for leave is foreseeable but the employee does not learn of the need for leave 30 days beforehand, notify management as soon as practicable, generally the same day the employee learns of the need for leave or the next business day.**
- When the need for leave is not foreseeable, **an employee must comply with the employer's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. Employees should** notify management as soon as practicable. **Leave requests should be submitted via PS Form 3971, Request for or Notification of Absence.**

- Provide the documentation required for FMLA-covered absences within a reasonable period of time; i.e., 15 days from the time the employer requests documentation.
- For medical emergencies, the employee or his spokesperson may give oral notice of the need for leave, or notice may be given by phone, telegraph, fax, or other means.

**Question: Is it mandatory for an employee to provide FMLA documentation within 15 days of the receipt of the request?**

**Answer: Yes, unless it is not practicable under the particular facts and circumstances.**

**Source: Attachment to Pre-arbitration Settlement Q00M-6Q-C 05099748 and Q06M-6Q-C 11100872, dated February 10, 2014.**

Although an employee is only required by FMLA to give oral notice of the need for leave, FMLA allows the Postal Service to require employees to comply with its usual and customary notice requirements for leave, i.e., PS Form 3971, Request for or Notification of Absence. However, if an employee fails to give written notice, the Postal Service may not deny or delay leave if an employee gives timely verbal or other notice, but may take appropriate disciplinary action **if the employee refuses to complete a PS Form 3971, Request for or Notification of Absence, upon his or her return.**

In answer to whether management can require “supporting documentation” for an absence of three days or less in order for an employee’s absence to be protected under the FMLA, the parties agreed that:

The Postal Service may require an employee’s leave to be supported by an FMLA medical certification, unless waived by management, in order for the absence to be protected. When an employee uses leave due to a condition already supported by an FMLA certification, the employee is not required to provide another certification in order for the absence to be FMLA protected.

We further agree that the documentation requirements for leave for an absence of three days or less are found in Section 513.361 of the Employee and Labor Relations Manual which states in pertinent part that:

For periods of absence of 3 days or less, supervisors may accept the employee’s statement explaining the absence. Medical documentation or other acceptable evidence of incapacity for work or need to care for a family member is required only when the employee is on restricted sick leave (see 513.39) or when the

supervisor deems documentation desirable for the protection of the interests of the Postal Service.

Source: Pre-arbitration Settlement Q98N-4Q-C 01090839, dated February 19, 2003.

**Return to work after an FMLA absence:** The current USPS policy is set forth in ELM Section 865.

**Ordinarily, an employee may submit a simple statement from his or her health care provider substantiating the employee's ability to return to work. However, where the employee has been on FMLA leave due to his or her own medical condition, the USPS may require the employee to submit a detailed medical clearance where management has a reasonable belief, based on reliable and objective evidence, that the employee may not be able to perform the essential functions of his/her position, or the employee may pose a direct threat to the health or safety of him/herself or others due to that medical condition. The reasonableness of the Service in delaying an employee's return beyond his/her scheduled tour of duty or the date stated in the medical documentation shall be a proper subject for the grievance procedure on a case-by-case basis.**

**In making the decision whether to require documentation in order to clear the employee's return to work, management must consider the essential functions of the employee's job, the nature of the medical condition or procedure involved, and any other reliable and objective information in order to make an individualized assessment whether there is a reason to require the return-to-work documentation.**

**When management is considering requesting return-to-work documentation, management should also seek guidance from the occupational health nurse administrator, occupational health nurse, and/or Postal Service physician regarding the return-to-work decision. After consideration of the medical information, the employee's working conditions, and any other pertinent information, management is to make the decision to clear the employee's return. Medical personnel consult with management but do not have authority to clear the employee to return to duty.**

**In cases of occupational illness or injury, the employee will be returned to work upon certification from the treating physician, and the medical report will be reviewed by a Postal Service physician as soon as possible thereafter.**

**Sources:** ELM Section 865.1; MOU Re Return to Duty; Pre-arbitration Settlement Q00M-6Q-C 05099748 and Q06M-6Q-C 11100872, dated February 10, 2014.

**FMLA Designation.** When an employee requests leave, the employee may, but need not, ask for the absence to be covered by FMLA. Rather, it is the supervisor's responsibility to recognize when leave may qualify as leave protected by the FMLA. In those cases, the manager or supervisor should designate the leave as FMLA pending. The employee will receive further information from the Postal Service Human Resources Shared Services Center (HRSSC) concerning his or her eligibility, rights and responsibilities; whether additional documentation is required in order to designate the leave as FMLA; and whether the absence is covered under the FMLA.

The above is a simplified overview of the FMLA and there is no intent to change any Department of Labor rules or regulations or Postal Service policies.

**Question:** Are the provisions of ELM Section 515 enforceable through the grievance-arbitration procedure?

**Answer:** Yes.

Source: Pre-arbitration Settlement F90N-4F-D 95043198, dated February 26, 1997.

**Question:** Should managers retain records containing medical records including a prognosis or diagnosis that might be generated under the procedures under the FMLA?

**Answer:** Management may maintain WH 380 or other certifications from health care providers that do not contain restricted medical information. Documents containing diagnosis or prognosis must be returned to the employee, destroyed, or, in accordance with the notice in the June, 2000 Federal Register, maintained separately in a locked file cabinet by the FMLA coordinator in accordance with the Postal Service's Privacy Act System of Records, USPS 170.020.

Source: Letters from A.J. Vegliante, Manager, Contract Administration (APWU/NPMHU), dated September 12, 1996 and D.A.Tulino, Manager, Labor Relations Policies and Programs, dated June 6, 2000.

**Question:** What forms should be used to request or support FMLA leave?

**Answer:** Documentation to substantiate leave under the FMLA is acceptable in any format including a form created by the union, as long as it provides the information as required by the FMLA.

**Source: National Arbitration Award Q06C-4Q-C 11001666 & Q06C-4Q-C 11008239, Arbitrator S. Das, dated April 18, 2012.**

A series of jointly-agreed to questions and answers interpreting the Family and Medical Leave Act can be found at the end of this article.

**RMD/eRMS:** In a Pre-arbitration settlement concerning the issue of whether the Resource Management Database (RMD) or its web-based counterpart, the enterprise Resource Management System (eRMS), violates the National Agreement, the parties agreed as follows:

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. Local policies, developed pursuant to these programs, shall not be implemented if they are in conflict with the National Agreement or with applicable manuals and handbooks.

When requested in accordance with Articles 17.3 and 31.3, relevant RMD/eRMS records will be provided to the Union representative.

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, Sick Leave for Dependent Care Memorandum of Understanding and the Americans with Disabilities Act. 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 NPMHU Local President or his/her designee.

It remains management's responsibility to consider only those elements of past record in disciplinary actions that comply with Article 16.10 of the National Agreement. The RMD/eRMS may track all current discipline; however, it must reflect the final settlement/decision reached in the Article 15 Grievance-Arbitration Procedure.

An employee's written request to have discipline removed from their record, pursuant to Article 16.10 of the National Agreement, shall also serve as the request to remove the record of discipline from RMD/eRMS.

Supervisor 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 NPMHU National Agreement.

Source: Step 4 Grievance Q98M-4Q-C 01113690, dated January 23, 2003.

In a 2005 arbitration award, National Arbitrator Das has dealt with three issues related to the FMLA:

1. Arbitrator Das ruled that, in applying ELM Section 513.332 in the context of the RMD process, Attendance Control Supervisors may ask questions in the RMD/eRMS process that are necessary to make FMLA determinations and to determine whether the absence is due to an on-the-job injury or for a condition that requires return-to-work procedures; Das also ruled, however, that the Postal Service may not otherwise require employees to describe the nature of their illness/injury. The Findings set forth in this Das Award should be reviewed for more details concerning these issues.

2. Noting that the Employer was permitted to require that a third medical opinion be obtained by the employee in cases where there was a difference between the original and second medical opinions, Arbitrator Das determined that the Postal Service had to rescind a process that required the employee to provide notification within a set time period that he/she did not accept the second medical opinion and wanted a third opinion; under this rejected process, if no such notification was provided, the second medical opinion would have been binding on the employee.

3. Finally, dealing with circumstances where the employee is absent for more than three days for a condition previously certified as a serious health condition requiring intermittent leave, Arbitrator Das ruled that the Postal Service was permitted to require compliance with ELM 513.362 (requiring “medical documentation or other acceptable evidence of incapacity for work”) if an employee seeks to substitute paid sick leave (or annual leave in lieu of sick leave) for unpaid FMLA leave.

Source: National Arbitration Award Q00C-4Q-C 03126482, Arbitrator S. Das, dated January 28, 2005.

**Arbitrators have the authority to interpret and apply statutory law, including the Family and Medical Leave Act, when necessary to their decision in a pending grievance.**

**Source: Step 4 Grievance C06M-1C-C 10158799, dated February 12, 2013 (citing National Arbitration Award Q98N-4Q-C 01090839, Arbitrator D. Nolan, dated April 28, 2002).**

## **MEMORANDUM OF UNDERSTANDING**

### **ANNUAL LEAVE CARRY-OVER**

The parties agree that, as soon as practicable after the signing of the 1990 National Agreement, the applicable handbooks and manuals will be modified to provide revised regulations for annual leave carryover as follows:

- (a) Regular work force employees covered by this agreement may carry over 440 hours of accumulated annual leave beginning with leave carried over from leave year 1991 to leave year 1992.
- (b) Employees who fall under the provisions of Public Law 83-102 and who have maintained a carryover of more than 440 hours cannot increase their present ceiling.
- (c) The parties agree that ELM 512.73d shall be changed to reflect that an employee covered by the NPMHU National Agreement is not paid for annual leave in excess of 55 days. In all other respects, the ELM provisions for payment of accumulated leave are not changed because of this Memorandum.

## **MEMORANDUM OF UNDERSTANDING**

### **ANNUAL LEAVE EXCHANGE OPTION**

The parties agree that mail handler career employees will be allowed to sell back a maximum of forty (40) hours of annual leave prior to the beginning of the leave year provided the following two criteria are met:

- 1) The employee must be at the maximum leave carry over ceiling at the start of the leave year, and

- 2) The employee must have used fewer than 75 sick leave hours in the leave year immediately preceding the year for which the leave is being exchanged.

This Memorandum of Understanding expires **September 20, 2019**.

## **MEMORANDUM OF UNDERSTANDING**

### **LEAVE SHARING**

The Postal Service will continue a Leave Sharing Program during the term of the **2016** National Agreement under which career postal employees are able to donate annual leave from their earned annual leave account to another career postal employee. Single donations must be of 8 or more whole hours and may not exceed half of the amount of annual leave earned each year based on the leave earnings category of the donor at the time of donation. Sick Leave, unearned annual leave, and annual leave hours subject to forfeiture (leave in excess of the maximum carryover which the employee would not be permitted to use before the end of the leave year), may not be donated, and employees may not donate leave to their immediate supervisors. To be eligible to receive donated leave, a career employee (a) must be incapacitated for available postal duties due to serious personal health conditions including pregnancy and (b) must be known or expected to miss at least 40 more hours from work than his or her own annual leave and/or sick leave balance(s), as applicable, will cover, and (c) must have his or her absence approved pursuant to standard attendance policies. Donated leave may be used to cover the 40 hours of LWOP required to be eligible for leave sharing.

For purpose other than pay and legally required payroll deductions, employees using donated leave will be subject to regulations applicable to employees in LWOP status and will not earn any type of leave while using donated leave.

Donated leave may be carried over from one leave year to the next without limitation. Donated leave not actually used remains in the recipient's account (i.e. is not restored to donors). Such residual donated leave at any time may be applied against negative leave balances caused by a medical exigency. At separation, any remaining donated leave balance will be paid in a lump sum.

**(The preceding MOU, Leave Sharing, shall apply to Mail Handler Assistant employees.)**

**Question:** What is the Leave Sharing Program?

**Answer:** The Leave Sharing Program was first established under the 1990 National Agreement in order to permit a career postal employee to donate annual

leave from his/her earned annual leave account to another career postal employee. The employees also must meet the eligibility criteria set forth in the above MOU. The 2006 National Agreement eliminated the prior restriction that donations could only be made to employees who were family members or who worked within the same geographic area served by a postal district.

When agreeing to this change in the Leave Sharing Program, the parties also agreed to a letter stating as follows:

During negotiations over the terms of the 2006 National Agreement between the National Postal Mail Handlers Union and the U.S. Postal Service, the parties reached the following understanding with regard to the changes made to the Leave Sharing Memorandum of Understanding.

The parties agree that the change to the first paragraph of this Memorandum of Understanding, deleting the geographic restriction on the Leave Sharing Program, is not intended to add the administrative burden of additional postings outside of the jurisdictional boundaries of the district to the Leave Sharing Program Coordinator.

While new language in the Leave Sharing MOU eliminated prior geographic limitations on donations, management is not required to advertise requests for leave donation beyond the geographic area served by the district in which the employee requesting the donation works.

**Question: Does the MOU on Leave Sharing apply to MHAs?**

**Answer: Yes.**

#### **MEMORANDUM OF UNDERSTANDING**

##### **LWOP IN LIEU OF SL/AL**

It is hereby agreed by the U.S. Postal Service and the National Postal Mail Handlers Union that:

1. As provided for in the Employee and Labor Relations Manual (ELM) Exhibit 514.4(d), an employee need not exhaust annual leave and/or sick leave before requesting leave without pay.
2. As specified in ELM 513.61, if sick leave is approved, but the employee does not have sufficient sick leave to cover the absence, the difference is charged to annual leave or to LWOP at the employee's option.

3. Employees may use LWOP in lieu of sick or annual leave when an employee requests and is entitled to time off under ELM 515, Absences for Family Care or Serious Health Problem of Employees (policies to comply with the Family and Medical Leave Act)
4. In accordance with Article 10, Section 6, when an employee's absence is approved in accordance with normal leave approval procedures, the employee may utilize annual and sick leave in conjunction with leave without pay. We further agree that this would include an employee who wishes to continue eligibility for health and life insurance benefits, and/or those protections for which the employee may be eligible under Article 6 of the National Agreement.

**(The preceding MOU, LWOP in Lieu of SL/AL, shall apply to Mail Handler Assistant employees.)**

**Question:** May an employee who is on extended absence and who wishes to continue eligibility for health and life insurance benefits and protections under Article 6 use sick leave and/or annual leave in conjunction with LWOP prior to exhausting his/her leave balance?

**Answer:** An employee who is on extended absence may use annual and/or sick leave in conjunction with LWOP prior to exhausting his/her leave balances, subject to approval of the leave in accordance with normal procedures. However, management is not obligated to approve such leave for the last hour of an employee's scheduled workday prior to and/or the first hour of an employee's scheduled workday after a holiday.

Source: Step 4 Grievance H7C-NA-C 9, dated May 4, 1988.

**Question:** Should use of this MOU result in increased leave usage?

**Answer:** It is not the intent of this MOU to increase leave usage (i.e., approved time off.) Moreover, it is not the intent that every or all instances of approved leave be changed to LWOP, thus allowing an employee to accumulate a leave balance that would create a "use or lose" situation.

Source: MOU dated August 1, 1991.

**Question: Does the MOU on LWOP in Lieu of SL/AL apply to MHAs?**

**Answer: Yes.**

## MEMORANDUM OF UNDERSTANDING

## **SICK LEAVE FOR DEPENDENT CARE**

During the term of the **2016** National Agreement, sick leave may be used by an employee to give care or otherwise attend to a family member having an illness, injury or other condition which, if an employee had such condition, would justify the use of sick leave by the employee. Family members shall include son or daughter, parent and spouse as defined in ELM Section 515.2. Up to 80 hours of sick leave may be used for dependent care in any leave year. Approval of sick leave for dependent care will be subject to normal procedures for leave approval.

## **MEMORANDUM OF UNDERSTANDING**

### **PART-TIME FLEXIBLE COURT LEAVE**

1. Effective September 26, 1987, part-time flexible employees who have completed their probationary period shall be eligible for court leave as defined in Employee and Labor Relations Manual Part 516.1 and 516.31.
2. A part-time flexible employee will be eligible for court leave if the employee would otherwise have been in a work status or annual leave status. If there is a question concerning that status, the part-time flexible employee will be eligible if the employee was in work status or annual leave status on any day during the pay period immediately preceding the period of court leave.
3. If eligibility is established is established under paragraph 2, the specific amount of court leave for an eligible part-time flexible employee shall be determined on a daily basis as set forth below:
  - a. If previously scheduled, the number of straight time hours the Employer scheduled the part-time flexible employee to work;
  - b. If not previously scheduled, the number of hours the part-time flexible employee worked on the same service day during the service week immediately preceding the period of court leave.
  - c. If not previously scheduled and if no work was performed on the same day in the service week immediately preceding the period of court leave, the guarantee as provided in Article 8, Section 8, of the National Agreement, provided the part-time flexible would otherwise have been requested or scheduled to work on the day for which court leave is requested.
4. The amount of court leave for part-time flexible employees shall not exceed 8 hours in a service day or 40 hours in a service week.

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
UNITED STATES POSTAL SERVICE  
AND THE  
NATIONAL POSTAL MAIL HANDLERS UNION**

Re: Bereavement Leave

NPMHU represented employees may use a total of up to three workdays of annual leave, sick leave or leave without pay, to make arrangements necessitated by the death of a family member or attend the funeral of a family member. Authorization of leave beyond three workdays is subject to the conditions and requirements of Article 10 of the National Agreement, Subsection 510 of the Employee and Labor Relations Manual and the applicable local memorandum of understanding provisions.

Definition of Family Member. “Family member” is defined as a:

- (a) Son or daughter – a biological or adopted child, stepchild, daughter-in-law or son-in-law;
- (b) Spouse;
- (c) Parent- **mother, father, mother-in-law, or father-in-law;**
- (d) Sibling – brother, sister, brother-in-law or sister-in-law; or
- (e) Grandparent.

Use of Sick Leave. The use of sick leave for bereavement purposes will be charged to sick leave for dependent care.

Documentation. Documentation evidencing the death of the employee’s family member is required only when the supervisor deems documentation desirable for the protection of the interest of the Postal Service.

**(The preceding MOU, Bereavement Leave, shall apply to Mail Handler Assistant employees.)**

Mail handlers may use up to three days of annual leave, sick leave or LWOP to make arrangements necessitated by the death of, or to attend the funeral of, a family member, as defined in the MOU. **As part of the 2016 National Agreement, parent was defined to include mother-in-law and father-in-law.** If sick leave is used, it is charged as Sick Leave for Dependent Care and counts

against the 80 hours an employee may use during the leave year. Approval of leave requests beyond three days follows normal leave approval procedures. Documentation evidencing the death of the employee's family member can be required only when the supervisor deems it desirable for protection of Postal Service interests.

**Question: How does the MOU on Bereavement Leave apply to MHAs?**

**Answer: MHAs do not earn sick leave and therefore may only request annual leave or leave without pay (LWOP) for bereavement purposes.**

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE UNITED STATES POSTAL SERVICE  
AND  
NATIONAL POSTAL MAIL HANDLERS UNION

Re: Administrative Leave for Bone Marrow, Stem Cell, Blood Platelet, and Organ Donations

The parties agree that the maximum administrative leave that can be granted per leave year to cover qualification and donation is limited to the following:

- a) A full-time or part-time regular career employee is limited to:
- (1) for bone marrow, up to **56 hours**;
  - (2) for stem cells, up to **56 hours**;
  - (3) for blood platelets, up to **56 hours**; and
  - (4) for organs, up to **240 hours**.
- b) A part-time flexible **or part time regular** career employee **or a Mail Handler Assistant employee** may be granted leave up to the limits of **7 days for bone marrow, stem cells, or blood platelets, and up to the limit of 30 days for organs**. The amount of leave that may be granted will be based on the employee's average daily work hours in the preceding 26 weeks, but not to exceed 8 hours per day.

**(The preceding MOU, Administrative Leave for Bone Marrow, Stem Cell, Blood Platelet, and Organ Donations, shall apply to Mail Handler Assistant employees.)**

**The amount of administrative leave that a mail handler may be granted to qualify for and donate the designated items is adjusted, as reflected in the MOU. The maximum leave amounts are stated in hours, rather than days.**

**Whether full-time regular mail handler employees have the right to receive administrative leave in minimum 8-hour increments for donating blood platelets was decided at the National level by Arbitrator Shyam Das.**

**The provisions in ELM Section 519.42 and the MOU on Administrative Leave for Bone Marrow, Stem Cell, Blood Platelet, and Organ Donations does not grant employees the right to a minimum 8 hours of administrative leave for such donations.**

**Source: National Arbitration Award B06M-1B-C 11135186, Arbitrator S. Das, dated September 26, 2014.**

**Question: Are MHAs entitled to administrative leave for bone marrow, stem cell, blood platelet, and organ donations?**

**Answer: Yes.**

## **MEMORANDUM OF UNDERSTANDING**

### **RETURN TO DUTY**

The parties affirm their understanding concerning the review of medical certificates submitted by employees who return to duty following extended absences due to illness.

We mutually agree to the following:

1. To avoid undue delay in returning an employee to duty, the on-duty medical officer, contract physician, or nurse should review and make a decision based upon the presented medical information the same day it is submitted.

Normally, the employee will be returned to work on his/her next scheduled tour of duty or the date stated in the medical documentation, provided that adequate medical documentation is submitted within sufficient time for review and that a decision is made to return the employee to duty.

2. The reasonableness of the Service in delaying an employee's return beyond his/her next scheduled tour of duty or the date stated in the medical documentation shall be a proper subject for the grievance procedure on a case-by-case basis.

**This MOU provides guidelines for review of medical certification to assist in prompt return to duty of an employee who has been on extended**

**absences due to illness, when it is determined that the employee will be returned to duty.**

**The parties at the National Level signed a February 10, 2014 pre-arbitration settlement stating as follows:**

**“The current ELM 865 language does not negate management’s obligation under the MOU on Return to Duty when returning an employee to duty after an absence for medical reasons.**

**“The reasonableness of the Service in delaying an employee’s return beyond his/her next scheduled tour of duty or the date stated in the medical documentation shall be a proper subject for the grievance procedure on a case-by-case basis.”**

**Source: Pre-arbitration Settlement Q00M-6Q-C 05099748 and Q06M-6Q-C 11100872, dated February 10, 2014.**

**In a recent National Arbitration Award, Arbitrator Shyam Das rejected the Postal Service’s attempt to mandate the use of certain forms issued by the U.S. Department of Labor when an employee requests FMLA leave. His decision stated as follows:**

**Significantly, there has been no change in the FMLA or the related DOL regulations that would necessitate mandatory use of the WH-380. On the contrary, under current DOL regulations, use of the WH-380 by an employer is optional. Because unilaterally changing ELM 510 to mandate use of previously optional WH-380 forms violated Article 10.2.A of the National Agreement and the [CIM], there is no need here to decide whether the Postal Service's action in requiring use of the WH-380 also violated the FMLA, as the Union contends. Accordingly, the Postal Service is directed to cease and desist from requiring employees to submit FMLA medical certifications using only the WH-380 forms.**

**Source: National Arbitration Award Q06C-4Q-C 11001666 & Q06C-4Q-C 11008239, Arbitrator S. Das, dated April 18, 2012.**

**The NPMHU and the Postal Service have agreed upon the following series of questions and answers to help interpret the Family and Medical Leave Act:**

**Question:** What is the Family and Medical Leave Act of 1993?

**Answer:** In general, the Act entitles eligible employees to be absent for up to 12 workweeks per year for the birth or adoption of a child; to care for a spouse, son, daughter, or parent with a serious health condition; or when unable to work because of a serious health condition without loss of their job or health benefits. The FMLA does not provide more annual or sick leave than that which is already provided to Postal Service employees.

Source: 29 CFR Section 825.100.

**Question:** Which employees are eligible?

**Answer:** Employees who have been employed by the Postal Service for at least one year and who have worked at least 1,250 hours during the previous 12 months are eligible.

Sources: 29 CFR Section 825.110; ELM 444.22.

**Question:** Do COP, OWCP, military leave and court leave count toward eligibility requirements under the FMLA?

**Answer:** COP, OWCP, court leave, and absences for military service count toward the 12-month eligibility requirement. However, except as provided hereafter for military leave, none of the times mentioned count toward the 1,250 hours worked eligibility requirement. The hours that would have been worked for the employer, based on the employee's work schedule prior to the military service, are added to any hours actually worked during the previous 12-month period to determine if the employee meets the 1,250 work hour requirement.

Sources: 29 CFR Section 825.110, ELM 444.22 and Letter from D.A.Tulino, Manager, Labor Relations Policies and Programs, dated September 25, 2002.

**Question:** If both spouses work for the Postal Service, does the USPS let both take up to 12 workweeks each of protected absences under FMLA each leave year?

**Answer:** Yes.

Source: ELM 515.4

**Question:** Can an employee who is separated or divorced take a protected absence under the FMLA to care for a spouse or ex-spouse with a serious health condition?

**Answer:** For an employee to take such leave, the couple must be legally married.

Source: 29 CFR Section 825.113

**Question:** My mother-in-law who lives with me is ill and requires my care. Does management have to approve my leave as a covered condition?

**Answer:** No, the FMLA only provides protected absences for covered conditions of a spouse, parent, son or daughter. Leave taken to care for anyone else would require approval under normal leave policies.

Source: 29 CFR Section 825.112

**Question:** My knee problem was diagnosed during an appointment with a health care provider. He ordered three months of physical therapy treatments. Are the visits and the treatments protected by the FMLA?

**Answer:** Yes, where properly documented as a serious health condition, the absence would qualify for FMLA protection since it involves a continuing treatment under the supervision of a health care provider. The health care provider is stating that lack of treatment would likely result in a period of incapacity of more than three days. Employees needing intermittent FMLA leave or leave on a reduced leave schedule must attempt to schedule their leave so as not to disrupt the employer's operations.

Sources: 29 CFR Section 825.114(a)(2)(v); 29 CFR Section 825.117

**Question:** My wife's doctor said she needs almost total bed rest for the last two months of her pregnancy, and I need to stay home to care for our other children. Is this condition covered under the FMLA?

**Answer:** FMLA does not cover babysitting for the other children. However, where properly documented that the husband is needed to care for her, the wife's serious health condition would entitle the husband to a FMLA protected absence.

Source: 29 CFR Section 825.116

**Question:** If I use a midwife for both my prenatal care and the delivery of my child, would my pregnancy still be a condition covered under the FMLA?

**Answer:** Yes, pregnancy is a covered condition under the FMLA. Midwives are considered health care providers if they are authorized to practice under State law and are performing within the scope of their practice as defined under State law.

Sources: 29 CFR Section 825.118(b)(2); 29 CFR Section 825.118(c)

**Question:** An employee had a baby and took 6 weeks of leave during a period when she was not eligible under the FMLA. Now she is eligible, and the baby is still less than a year old. Can she now take the 12 workweeks of protected absences under the FMLA?

**Answer:** Yes, only the time taken when eligible under the FMLA counts toward the 12 workweeks.

Source: 29 CFR Section 825.112

**Question:** Is an employee entitled to 12 workweeks of protected absences under the FMLA for placement or care of an adopted or foster child?

**Answer:** Yes, provided they have not used any of their 12 week entitlement during the leave year for another FMLA covered condition.

Sources: 29 CFR Section 825.112; 29 CFR Section 825.200; 29 CFR Section 825.201

**Question:** I took a week of protected leave under the FMLA to care for my baby who was born 2 months ago. Now I want to take the week of July 4th off to be with my baby. Since caring for my newborn is a condition covered under the FMLA, does my supervisor have to let me off for the week of July 4th?

**Answer:** Not necessarily. You are requesting time off for the birth and care of a child on an intermittent basis. Therefore, your request for the week of July 4th is subject to your supervisor's approval in accordance with current leave policies.

Source: 29 CFR Section 825.203

**Question:** May an employee take protected leave under the FMLA to look for child care?

**Answer:** No, **unless the employee is otherwise covered by military caregiver rules. Of course, a supervisor may approve regular annual leave for such a purpose.**

Source: 29 CFR Section 825.112

**Question:** An employee has a recurrent degenerative knee condition that qualifies as a serious health condition. The certification indicates his condition may "flare" up 1 to 2 days per month and render him incapacitated for duty. Consequently, the employee requests covered absences under the FMLA with little or no advance notice. Does this meet the criteria or intent of the intermittent leave entitlement under the FMLA?

**Answer:** Intermittent absences due to a chronic condition which incapacitates an employee are covered by the FMLA.

Sources: 29 CFR Section 825.114; 29 CFR Section 825.117; 29 CFR Section 825.203; 29 CFR Section 825.204

**Question:** Is treatment for substance abuse covered under the FMLA?

**Answer:** Yes, if certified by the health care provider as a serious health condition. Absence because of the employee's use of the substance, rather than for treatment, does not qualify as a covered condition under the FMLA.

Sources: 29 CFR Section 825.114(d); 29 CFR Section 825.112(g)

**Question:** Can the flu be considered a serious health condition under the FMLA?

**Answer:** Yes, if it complies with the definition of a serious health condition under the FMLA.

Source: 29 CFR Section 825.114(c)

**Question:** If my child is sick, can I now take sick leave to care for him?

**Answer:** Yes, under the National Agreement-Memorandum of Understanding on Sick Leave for Dependent Care, employees may use up to 80 hours of their earned sick leave to care for a spouse, parent, son or daughter. Sick leave for Dependent Care is only protected under the FMLA when the illness qualifies as a serious health condition under the FMLA.

Sources: Memorandum of Understanding Re Sick Leave for Dependent Care; ELM 515.2

**Question:** How do I apply for leave under the FMLA?

**Answer:** Submit a form PS 3971, Request for or Notification of Absence, with the supporting documentation. Leave under the FMLA is not a separate category or type of leave. You may request annual leave, sick leave or LWOP for your absence under the FMLA. Just as in the past, in an emergency situation a phone call, telegram, etc. will suffice until it is possible for you to submit the necessary paperwork.

Sources: 29 CFR Section 825.302; 29 CFR Section 825.303; ELM 510

**Question:** Do I have to mention the Family Medical Leave Act when I request time off for a covered condition?

**Answer:** No. However, an employee must explain the reasons for the absence and give enough information to allow the employer to determine that the leave qualifies for FMLA protection. If the employee fails to explain the reasons, the leave may not be protected under the FMLA.

Sources: 29 CFR Section 825.208; 29 CFR Section 825.302; 29 CFR Section 825.303

**Question:** Do I have to use all of my annual leave balance before I can take LWOP for a condition covered under the FMLA?

**Answer:** No, you need not exhaust annual leave and/or sick leave before requesting leave without pay. The use of leave, paid or unpaid, is subject to management's approval consistent with the handbooks, manuals, the National Agreement and the FMLA.

Source: 29 CFR Section 825.207

**Question:** Can I take more than 12 workweeks of leave during a postal leave year?

**Answer:** Twelve workweeks is the maximum amount of protected leave which must be granted for the covered conditions under the FMLA. After being off for the workweeks described, an employee may request leave under current leave policies, but that time would not be protected under the FMLA. Approval for such non-FMLA leave will be subject to the terms and conditions of current policies.

Sources: 29 CFR Section 825.200; ELM 510

**Question:** Do the 12 workweeks of FMLA protected leave have to be continuous?

**Answer:** No, the leave may be taken intermittently or on a reduced schedule basis as long as taking it in that manner is medically necessary. When leave is taken because of the birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the supervisor agrees.

Sources: 29 CFR Section 825.203; 29 CFR Section 825.204

**Question:** How will I know if the requested leave counts as part of the 12 workweek entitlement under the Family and Medical Leave Act?

**Answer:** The supervisor should provide you a copy of the Form 3971. If the leave is approved as one of the covered conditions, the approving official will check the "Approved, FMLA" block on the Form 3971.

Sources: 29 CFR Section 825.301; ELM 515

**Question:** If the employee does not request FMLA protection for an absence that meets the definition of a covered condition under the FMLA, must the supervisor designate the absence as FMLA protected leave?

**Answer:** Yes, if the employee provides sufficient information for the supervisor to be able to designate it as FMLA protected leave.

Source: 29 CFR Section 825.208

**Question:** If an employee is absent on sick leave and, while absent is diagnosed as having a serious health condition, will his entire absence be protected under the FMLA?

**Answer:** Yes, if the employee provides the supervisor with the necessary information about the serious health condition within two days of returning to work.

Source: 29 CFR Section 825.208(d), (e)

**Question:** Is the employer's approval required for an employee to use intermittent leave or work a reduced schedule if the employee, spouse, child or parent has a serious health condition?

**Answer:** The absence must be allowed provided proper medical certification and notice is provided. However, in foreseeable cases, the employee must attempt to schedule the absences so as not to disrupt the employer's operation. The employee may be assigned to an alternative position with equivalent pay and benefits that better accommodates the intermittent or reduced leave schedule, in accordance with National Agreement.

Sources: 29 CFR Section 825.203; 29 CFR Section 825.204

**Question:** If an employee requests leave for a condition covered under the FMLA, what information should the supervisor provide to the employee?

**Answer:** A supervisor should provide the following information:  
Whether the employee is eligible or when the employee will be eligible.  
Whether the leave will be designated as FMLA protected.  
A copy of PS Form 3971 stating the type of leave and whether the approval is pending documentation.

Source: 29 CFR Section 825.301

**Question:** What certification is required for employees requesting leave protected under the FMLA because of the birth or placement of a son or daughter, and in order to care for such son or daughter after birth or placement?

**Answer:** That the employee is the parent and the date of birth or placement of this son or daughter. No medical certification is required.

Source: 29 CFR Section 825.113(d)

**Question:** Is recertification required for each absence when a health care provider has certified that the employee is receiving continuing treatment?

**Answer:** Excluding pregnancy, chronic conditions, and permanent/long-term conditions, recertification is not required for the duration of treatment or period of incapacity specified by the health care provider, unless:

- the employee requests an extension of leave
- circumstances have changed significantly from the original request
- the employer receives information that casts doubt upon the continuing validity of the certification
- the absence is for a different condition or reason

Source: 29 CFR Section 825.308

**Question:** What can an employer do if he or she questions the adequacy of medical certification that includes all the required information?

**Answer:** With the employee's permission, a health care provider representing the Postal Service may contact the employee's health care provider to clarify the medical certification. Also, the Postal Service may require the employee to obtain a second opinion at the employer's expense.

Source: 29 CFR 825.307

**Question:** Is advance notice required for employees' use of protected leave under FMLA?

**Answer:** An employee must provide the Postal Service at least 30 days advance notice if the need for the leave is foreseeable. When the need for leave is not foreseeable, an employee should give notice to the Postal Service as soon as practicable by telephone, fax or other electronic means.

Sources: 29 CFR Section 825.302; 29 CFR Section 825.303

**Question:** Can a supervisor have a blanket policy that requires recertification every 30 days for all employees requesting FMLA protection for absences related to pregnancy, chronic conditions, and permanent/long-term conditions?

**Answer:** No. On a case by case basis, the supervisor may require recertification of such conditions on a reasonable basis, but not more often than every 30 days and only in connection with an absence related to the condition. The supervisor may require recertification in less than 30 days when:

- circumstances in the previous certification have changed
- the supervisor receives information that casts doubt upon the employee's stated reason for the absence

Source: 29 CFR Section 825.308(a)

**Question:** May an employee be removed, disciplined, or placed on restricted sick leave as a result of protected absences under the FMLA?

**Answer:** No.

Source: 29 CFR Section 825.220

**Question:** Some Local Memoranda of Understanding (LMOUs) allow for daily percentages off on leave. Will that affect those who need protected leave under the FMLA?

**Answer:** No, leave percentages do not affect the rights of employees to be absent under the FMLA. LMOU language will determine whether FMLA absences count towards the percentages.

**Question:** Can an employee file an EEO complaint related to FMLA?

**Answer:** Yes, but only on the grounds that the FMLA was applied in a discriminatory manner.

Source: 29 CFR Section 825.702

**Question:** Can a step increase be deferred as a result of LWOP used under the FMLA?

**Answer:** Yes, if an employee has used 13 weeks of LWOP during a step increase waiting period, then the step increase can be deferred. The Family and Medical Leave Act does not require accrual of any rights or benefits during the period of leave taken under the FMLA.

Source: 29 CFR Section 825.209(h)

**Question:** My last chance agreement states that if I have more than 4 unscheduled absences within the next six months, I can be removed from the Postal Service. Will an absence protected under the FMLA count as an absence for the purposes of my last chance agreement?

**Answer:** No.

Source: 29 CFR Section 825.220

**Question:** While absences for conditions covered by the FMLA cannot be cited as a basis for discipline, can they be discussed in periodic absence reviews concerning the importance of regular attendance?

**Answer:** Yes.

**Question:** Can the employee be separated after he or she has exhausted leave protected under the FMLA but is still unable to return to work?

**Answer:** Once leave protected under the FMLA has been exhausted, the employee's failure or inability to return to work should be treated as any other failure or inability to return to work (i.e., as any other absence).

Sources: 29 CFR Section 825.309; 29 CFR Section 825.312.

#### **MEMORANDUM OF UNDERSTANDING**

##### **TASK FORCE ON SICK LEAVE**

**The parties agree to establish at the national level a “Task Force on Sick Leave – Incentives”. The Task Force will explore available opportunities for the parties to determine if there are alternative options available to employees with regard to the utilization of sick leave.**

**Nothing in this memorandum is intended to negate or alter the applicable requirements of this national agreement or be inconsistent with obligations under law.**

#### **MEMORANDUM OF UNDERSTANDING**

##### **WOUNDED WARRIOR LEAVE**

**The parties agree that MHAs shall be covered by the regulations that must be written by the Postal Service under the Wounded Warrior Federal Leave Act of 2015.**

**This MOU was intended to implement the Wounded Warrior Federal Leave Act of 2015, which grants veterans with a 30% disability with up to 104 hours of leave during their first year of employment. When this MOU was first signed, it guaranteed that MHAs would be covered by the regulations then being developed by the Postal Service. In the interim, the regulations have been written, and the National Office has reviewed and approved most aspects of these regulations. They took effect on November 5, 2016.**

## **ARTICLE 11 HOLIDAYS**

### **Section 11.1 Holidays Observed**

The following ten (10) days shall be considered holidays for full-time and part-time regular schedule employees, hereinafter referred to in this Article as “employees”:

New Year's Day  
Martin Luther King, Jr.'s Birthday  
Washington's Birthday  
Memorial Day  
Independence Day  
Labor Day  
Columbus Day  
Veterans' Day  
Thanksgiving Day  
Christmas Day

**The following six (6) days shall be considered holidays for MHAs:**

**New Year's Day  
Memorial Day  
Independence Day  
Labor Day  
Thanksgiving Day  
Christmas Day**

### **Section 11.2 Eligibility**

To be eligible for holiday pay, an employee must be in a pay status the last hour of the employee's scheduled workday prior to or the first hour of the employee's scheduled workday after the holiday.

An employee who is working or on approved paid leave is considered to be “in a pay status,” and therefore eligible for holiday leave pay.

**Among career employees, only full-time and part-time regular employees receive holiday leave pay. Part-time flexible employees do not. Instead, as explained under Section 11.7, part-time flexible employees are paid at a slightly higher straight-time hourly rate to compensate them for not receiving paid**

holidays. **Beginning with the 2016 National Agreement, MHAs receive holiday pay for days each year.**

**Question: Do MHAs receive holiday pay?**

**Answer: MHAs only receive holiday pay for the six holidays specified in Article 11.1 - New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.**

**Question:** Can an employee on extended absence use annual or sick leave to ensure eligibility for holiday leave pay?

**Answer:** An employee who is on extended absence may use annual and/or sick leave in conjunction with leave without pay (LWOP) prior to exhausting his or her leave balances, subject to the approval of the leave in accordance with normal procedures. For example, an employee on extended LWOP to conduct union business may utilize annual or sick leave during a pay period, for purposes that include continuing eligibility for health and life insurance benefits and/or protections under Article 6. However, management is not obligated to approve such leave for the last hour of an employee's scheduled workday prior to and/or the first hour of an employee's scheduled workday after a holiday.

**To be eligible for holiday pay, an employee must be in a pay status the last hour of the employee's scheduled workday prior to or the first hour of the employee's scheduled workday after the holiday. Determination of this issue is based on the fact circumstances involved.**

**Source: Step 4 Grievance B00M-1B-C 06008265, dated November 20, 2009.**

It is inappropriate for an employee in an extended LWOP status to manipulate the utilization of paid leave for the purpose of obtaining a paid holiday. For example, it would be inappropriate for an employee on extended LWOP to request annual or sick leave for the last hour prior to or the first hour following his/her holiday in order to obtain holiday pay. Nonetheless, management should not deny a paid leave request from an employee in an extended LWOP status solely because it provides entitlement to a paid holiday.

Source: Step 4 Grievance H7C-NA-C 9, dated May 4, 1988; Pre-arbitration Settlement H7C-NA-C 83, dated October 29, 1993.

**Question:** Is an employee using "donated leave" entitled to holiday leave pay?

**Answer:** No. For purposes other than pay and legally required payroll deductions, employees using "donated leave" are subject to the regulations applicable to employees in LWOP status.

Source: Memorandum of Understanding Re: Leave Sharing.

### **Section 11.3 Payment**

A An employee shall receive holiday pay at the employee's base hourly straight time rate for a number of hours equal to the employee's regular daily working schedule, not to exceed eight (8) hours. In addition, as provided for in Section 4 below, employees who work their holiday may, at their option, elect to have their annual leave balance credited with up to eight (8) hours of annual leave in lieu of holiday leave pay.

An eligible employee receives holiday leave pay for the number of hours equal to the employee's regular daily work schedule, not to exceed (8) hours. Thus, full-time employees receive eight (8) hours of holiday leave pay. Part-time regular employees scheduled to work a minimum of 5 days per service week are paid for the number of hours in their regular schedule. Part-time regular employees who are regularly scheduled to work less than 5 days per service week receive holiday leave pay only if the holiday falls on a regularly scheduled workday.

Source: Employee and Labor Relations Manual (ELM) Chapter 4, Sections 434.412a and .422.

B Holiday pay is in lieu of other paid leave to which an employee might otherwise be entitled on the employee's holiday.

Except as discussed under Section 11.4, holiday leave pay "replaces" other approved paid leave that the employee would otherwise receive on the holiday. For example, employees who would otherwise receive approved sick or annual leave on the employee's holiday would not have this time charged against their sick and annual leave balance.

**Question:** May an employee combine annual or sick leave with holiday leave pay in order to receive additional compensation?

**Answer:** No. Holiday leave pay is in lieu of other paid leave to which an employee might otherwise be entitled on a holiday.

Source: ELM 434.412.

**C The number of hours of holiday leave pay for MHAs will be based on the following:**

- **200 Man Year offices – 8 hours**
- **POSTPlan offices – 4 hours**
- **All other offices – 6 hours**

**MHAs who work on a holiday may, at their option, elect to have their annual leave balance credited with 4, 6, or 8 hours (as applicable).**

#### **Section 11.4 Holiday Work**

- A An employee required to work on a holiday other than Christmas shall be paid the base hourly straight time rate for each hour worked up to eight (8) hours. In addition, employees who work their holiday may, at their option, elect to have their annual leave balance credited with up to eight (8) hours of annual leave or receive holiday pay to which the employee is entitled as above described at Section 3A.
- B An employee required to work on Christmas shall be paid one and one-half (1½) times the base hourly straight time rate for each hour worked. In addition, employees who work their holiday may, at their option, elect to have their annual leave balance credited with up to eight (8) hours of annual leave or receive holiday pay to which the employee is entitled as above described at Section 3A.
- C Deferred holiday leave credited as annual leave, in accordance with Section 4.A or 4.B above, will be subject to all applicable rules for requesting and scheduling annual leave and shall be combined with annual leave and counted as annual leave for purposes of annual leave carryover.

An eligible employee who works on a holiday (except Christmas Day) or day designated as a holiday will be paid at the basic hourly straight-time rate for all hours worked, up to eight (8). This is in addition to the holiday leave pay that the employee is entitled to receive. Overtime is paid for work in excess of eight (8) hours.

Source: ELM Chapter 4, Section 434.53a,b.

**Question:** Who is eligible to receive holiday worked pay?

**Answer:** Full-time and part-time regular employees are eligible to receive holiday worked pay and Christmas worked pay. Part-time flexible employees are eligible to receive Christmas worked pay if they perform work on December 25.

**MHAs are only eligible for holiday worked pay for the six holidays specified in Section 11.1.**

Source: ELM Chapter 4, Sections 434.52.

**The issue in this grievance is whether part-time (PTF) employees are entitled to Christmas worked-pay for hours worked on December 24 or December 26.**

**After full discussion of this issue, we mutually agreed that no national interpretive issue is fairly presented in this case. PTF employees are eligible for Christmas-worked pay for hours worked on December 25 only.**

**Source: Step 4 E00M-1E-C 07087183, dated March 25, 2010.**

Full-time and part-time regular employees who are required to work on Christmas day or their designated Christmas holiday are paid an additional 50% of their basic hourly straight time rate for each hour worked up to eight hours of Christmas worked pay, in addition to their authorized holiday leave pay and holiday worked pay. Part-time flexibles receive an additional 50% Christmas worked pay for hours actually worked on Christmas Day, December 25.

Source: ELM Chapter 4, Sections 434.52 and .53b.

**Question: Are MHAs entitled to Christmas worked pay for hours worked on Christmas Day, December 25?**

**Answer: No.**

**Question:** Are eligible employees who work any part of December 25 entitled to Christmas worked pay?

**Answer:** Christmas worked pay is paid only when the eligible employee is required to work their Christmas holiday or their designated Christmas holiday. It is not paid for work performed on December 25, unless that date is the employee's holiday. As a specific exception to this rule, part-time flexibles receive Christmas worked pay only if they actually work on December 25.

Source: ELM Chapter 4, Sections 434.51 and 52.

**Question:** Will an employee who reports prior to midnight on Christmas Day for a service day of December 26 receive Christmas worked pay for the time between the beginning of that tour of duty and midnight Christmas Day?

**Answer:** No. In this situation, the employee is reporting to work for his or her December 26 service day.

Source: Step 4 Grievance H1C-3W-C 4572, dated July 2, 1982.

Eligible full-time and part-time regular mail handlers have the option to receive holiday leave pay or a future day of annual leave, if they work any part of their

holiday or designated holiday; this option applies whether the employee volunteers or is mandated to work. If a mail handler elects annual leave in lieu of holiday pay, appropriate payment for the hours actually worked on the holiday or designated holiday will continue to be paid. Holiday leave hours will not be paid and his/her annual leave balance will be appropriately adjusted by the number of holiday leave hours to which he/she is entitled (up to eight hours). That annual leave will become available for use in accordance with local leave usage policy and procedures as early as the following pay period.

Deferred holiday leave is combined with other annual leave credited to the employee and is, therefore, subject to loss if the employee has more than the maximum leave carryover at the end of the leave year.

Also, if the employee elects annual leave in lieu of holiday leave pay and seeks to work only part of the holiday or designated holiday, the employee must also concurrently request paid or unpaid leave to account for the remainder of the day. The supervisor retains authority based on local leave policy and procedures to approve or disapprove requests for partial holiday work and for paid or unpaid leave.

**Question:** Does it make any difference how many hours an employee works on the holiday?

**Answer:** No. Contractually eligible employees are granted the new annual leave option if they work on their holiday or designated holiday, regardless of the number of hours worked.

**Question:** What happens if a Full-time Regular employee works his/her entire shift on a holiday or designated holiday, and chooses to exercise his/her option to receive annual leave?

**Answer:** The employee will receive eight hours of holiday worked pay, for the hours actually worked, and a credit of eight hours to his/her annual leave balance, instead of receiving 16 hours of pay for working on the holiday. In other words, the employee is giving up eight hours of holiday leave pay, but will get eight hours of annual leave.

**Question:** If the employee does not work a full day on the holiday or designated holiday, must the employee take leave for the remainder of his/her day?

**Answer:** If an employee elects annual leave in lieu of holiday leave pay and requests to work only part of the holiday, the employee must request some type of paid or unpaid leave (e.g., annual, sick or LWOP) to account for the remainder of the day. For example, if the employee works for five hours, he/she would have to take three hours of leave. Supervisors may refuse employees' requests to work only part of their holiday. The supervisor would also exercise normal

discretion to approve or disapprove a leave request for the remainder of that day based on local leave policy and procedure. If an employee works a partial holiday because management requires it, guaranteed time, with few exceptions, may be appropriate for the remainder of the day.

**Question:** May mail handlers who do not work any part of their holiday or designated holiday elect annual leave in lieu of holiday leave pay?

**Answer:** No. Only mail handlers who work at least some part of their holiday or designated holiday are eligible for this new annual leave option.

### **Section 11.5 Holiday on Non-Work Day**

- A When a holiday falls on Sunday, the following Monday will be observed as the holiday. When a holiday falls on Saturday, the preceding Friday shall be observed as the holiday.
- B When an employee's scheduled non-work day falls on a day observed as a holiday, the employee's scheduled workday preceding the holiday shall be designated as that employee's holiday.

When a holiday falls on the employee's non-scheduled day, the first scheduled workday preceding the holiday is designated as his/her holiday. An exception occurs when the holiday falls on Sunday and Sunday is also the employee's non-scheduled day, as explained in the first example hereunder.

Examples:

1. If a holiday falls on Sunday and the employees' non-work days are Saturday and Sunday, the employees' designated holiday would be Monday. If the non-work days are Sunday and Monday, the employees' designated holiday would be Saturday. If the non-work days are Saturday and Friday, the employees' holiday would be Sunday since Sunday is a work day.
2. If the holiday falls on Saturday and the employees' non-work days are Saturday and Sunday, the employees' designated holiday would be Friday. If the employees' non-work days are Saturday and Friday, the employees' designated holiday would be Thursday. If the employees' non-work days are Sunday and Monday, the employees' holiday would be Saturday since Saturday is a work day.

### **Section 11.6 Holiday Schedule**

- A The Employer will determine the number and categories of employees needed for holiday work and a schedule shall be posted as of twelve noon (i.e., 12:00 p.m.) on the Tuesday preceding the service week in which the

holiday falls. As many full-time and part-time regular schedule employees as can be spared will be excused from duty on a holiday or day designated as their holiday.

**B** Employees shall be selected to work on a holiday within each category in the following order:

- B1 Casuals, even if overtime is required.
- B2 All available and qualified part-time flexible employees, even if overtime is required.
- B3 Full and part-time regular employees, in order of seniority who have volunteered to work on the holiday or the day designated as their holiday when such day is part of their regular work schedule. These employees would be paid at the applicable straight time rate.
- B4 MHAs, as specified below in Subsection D.
- B5 Full-time and part-time regular employees, in order of seniority, who have volunteered to work on a holiday or day designated as a holiday whose schedule does not include that day as a scheduled workday. Full-time employees would be paid at the applicable overtime rate.
- B6 Full-time and part-time regular employees in inverse order of seniority who have not volunteered to work on the holiday or day designated as a holiday when such day is part of their regular work schedule. These employees would be paid at the applicable straight time rate.
- B7 Full-time and part-time regular employees in inverse order of seniority who have not volunteered to work on the holiday or day designated as a holiday and would be working on what otherwise would be their non-scheduled workday. Full-time employees would be paid at the applicable overtime rate.

**C** An employee scheduled to work on a holiday who does not work shall not receive holiday pay, unless such absence is based on an extreme emergency situation and is excused by the Employer.

**D** Mail Handler Assistant Employees

MHAs will be scheduled for work on a holiday or designated holiday after all full-time or part-time volunteers are scheduled to work on their holiday or designated holiday. They will be scheduled, to the extent possible,

prior to any full-time volunteers or non-volunteers being scheduled to work a nonscheduled day or any full-time non-volunteers being required to work their holiday or designated holiday. If the parties have locally negotiated a pecking order that would schedule full-time volunteers on a non-scheduled day, the Local Memorandum of Understanding will apply.

[See Memo, page 158]

The provisions of Section 11.4A concerning straight-time pay for holiday work apply to all full-time employees whose holiday schedule is properly posted in accordance with this section.

**Question:** Does the holiday schedule have to be posted by a specific time of day?

**Answer:** Yes. The contract language requires that the holiday schedule be posted by twelve noon (i.e., 12:00 p.m.) on the Tuesday preceding the service week in which the holiday falls.

If the holiday schedule is not posted as of noon on the Tuesday preceding the service week in which the holiday falls, a full-time employee required to work on his or her holiday or designated holiday, or who volunteers to work on such day, will receive holiday scheduling premium for each hour of work, up to 8 hours. In accordance with the Memorandum of Understanding Re. Holiday Scheduling, reprinted hereunder, that premium consists of an additional 50% of the basic hourly straight-time rate for all hours worked up to 8 hours.

However, ELM, Section 434.53c(2) provides that:

In the event that, subsequent to the Tuesday posting period, an emergency situation attributable to Act(s) of God arises which requires the use of manpower on that holiday in excess of that scheduled in the Tuesday posting, full-time regular employees who are required to work or who volunteer to work in this circumstance(s) do not receive *holiday scheduling premium*.

National Arbitrator Fasser ruled on the appropriate remedy for violations of Section 11.6. He found that when an employee who volunteered to work on a holiday or designated holiday is erroneously not scheduled to work, “the appropriate remedy now is to compensate the overlooked holiday volunteer for the total hours of lost work.”

Source: National Arbitration Award NCC-6085, Arbitrator P. Fasser, dated August 16, 1978.

**The OTDL is not used when preparing the holiday schedule required by Article 11 (Section 11.6). If the need for additional full-time employees to work the holiday is determined subsequent to the posting of the holiday schedule, recourse to the OTDL would be appropriate.**

**Source: National Arbitration Award H8C-5D-C 14577, Arbitrator R. Mittenthal, dated April 15, 1983.**

The posting of a holiday schedule on the Tuesday preceding the service week in which the holiday falls is to include part-time flexible employees who at that point in time are scheduled to work on the holiday in question.

Source: Step 4 Grievance N-E-2574(41V2), dated April 6, 1973.

If additional part-time flexible employees are scheduled after the Tuesday posting, there is no entitlement to additional compensation for those part-time flexible employees who are scheduled after the posting deadline.

Arbitrator Gamser ruled that the posting of a holiday schedule pursuant to the provisions of Section 11.6, and the terms of a settlement agreement between the USPS and the APWU, NALC and the Mail Handlers, made on March 4, 1974, does not constitute a guarantee until the employee reports as scheduled. Deleting the names of seven regular employees from the holiday schedule after the indicated mail volume showed that they could be spared and prior to the holiday itself, was not a contract violation. In other words, if for operational reasons an employee(s) is removed from the holiday schedule after the posting, the employee is not guaranteed holiday pay. However, management is to avoid “playing it safe” by overscheduling and then later releasing those employees not needed. As the arbitrator noted, “Management certainly would not have had the right to schedule all regulars and part-time regulars just to be sure that sufficient manpower was on hand on the holiday and then to delete all such names and only require casuals to work the holiday.” He further noted that management has an obligation under Section 11.6 to “use as few regular and part-time regular employees as possible on a holiday and to allow them to be off from work on their regularly scheduled holidays.”

Source: National Arbitration Award H8C-5D-C 15429, Arbitrator H. Gamser, dated October 25, 1982.

If management identifies the need for additional employees for holiday work after the holiday schedule has been posted, the overtime desired list is relied upon. In a national arbitration case, Arbitrator Mittenthal ruled that when management needed more employees for holiday work due to a change in conditions after the holiday schedule had been posted, the decision to schedule employees from the overtime desired list rather than utilizing holiday volunteers was proper and did not violate Section 11.6 of the National Agreement. Once the holiday schedule

has been posted, volunteers have no preference over employees on the overtime desired list when management determines that additional employees are needed for holiday work.

Source: National Arbitration Award H8C-5D-C 14577, Arbitrator R. Mittenthal, dated April 15, 1983.

**Question:** Are full-time regular employees who volunteer for holiday period work considered to have volunteered for up to 12 hours on whatever day they are selected to work?

**Answer:** No. Employees are not considered to have volunteered for up to 12 hours of work. Scheduling of employees beyond eight hours is handled in keeping with the overtime provisions of Article 8.

Source: National Arbitration Award H4C-NA-C 21, Arbitrator R. Mittenthal, dated January 19, 1987.

**Question:** Can management assign individuals to work on a holiday or designated holiday because they are better qualified than another employee?

**Answer:** No. Management is required to follow the “pecking order” as set forth in Section 11.6, so long as the employee(s) are qualified to perform the needed duties; e.g., the employee possesses a Certificate of Vehicle Familiarization and Safe Operation if the duties involve the operation of powered equipment.

Source: Step 4 Grievance NB-S-1739, dated July 16, 1974.

**Question:** Can light or limited duty employees be scheduled for holiday work?

**Answer:** Light or limited duty employees can be scheduled for holiday work provided the work to be performed fits within their medical restrictions.

Source: Step 4 Grievances H1C-4F-C 2041, dated April 30, 1982, and H1C-4F-C 2430/2437, dated September 21, 1982.

**Question:** Does an employee who is scheduled to work his or her holiday or designated holiday and fails to do so receive holiday leave pay?

**Answer:** No, not usually. An employee who is scheduled to work his or her holiday or designated holiday and fails to do so will not receive holiday leave pay, as set forth in Section 11.6C above. However, if the absence was based on an extreme emergency and was excused by management, then the employee would receive holiday leave pay.

See further the Memorandum of Understanding Holiday Scheduling reprinted hereunder.

### **Section 11.7 Holiday Part-Time Employee**

A part-time flexible schedule employee shall not receive holiday pay as such. The employee shall be compensated for the ten (10) holidays by basing the employee's regular straight time hourly rate on the employee's annual rate divided by 2,000 hours. For work performed on December 25, a part-time flexible schedule employee shall be paid in addition to the employee's regular straight time hourly rate, one-half (½) times the employee's regular straight time hourly rate for each hour worked up to eight (8) hours.

Both Sections 11.1 and 11.7 provide that part-time flexible employees do not receive holiday leave pay. Instead, Section 11.7 provides that the holiday leave pay is “built into” the regular hourly rate for part-time flexibles. This explains why a part-time flexible’s hourly pay is always higher than that of full-time and part-time regular employees at the same level and step. Under the provisions of Section 11.7, the straight-time hourly rate for a part-time flexible is computed by dividing the annual salary for a full-time regular at that level and step by 2,000 hours, rather than the 2,080 figure used to calculate the full-time regular’s hourly rate. The difference of 80 hours is equivalent to a regular employee’s pay for ten holidays.

## **MEMORANDUM OF UNDERSTANDING**

### **HOLIDAY SCHEDULING**

The U.S. Postal Service and the National Postal Mail Handlers Union, AFL-CIO, a Division of the Laborers' International Union of North America, agree to the following regarding the scheduling of holidays:

1. The Employer shall post a holiday schedule as set forth in Article 11, Section 6, of this Agreement.
2. A full-time regular employee whose holiday schedule is properly posted in accordance with Article 11, Section 6, and who works within the posted schedule shall be paid in accordance with Article 11, Sections 2, 3, and 4. It is further agreed that any change in an employee's required duties does not constitute a change in the posted schedule for purposes of this memorandum of understanding.
3. a. Except as provided in subparagraphs (b) and (c) of this paragraph, when the Employer fails to post in accordance with Article 11, Section 6, a full-time regular employee required to work on

his/her holiday, or who volunteers to work on such holiday, shall be paid in accordance with Article 11, Sections 2, 3, and 4, and shall receive an additional fifty percent (50%) of the employee's base hourly straight-time rate for each hour worked up to eight hours.

b. In the event that, subsequent to the Article 11, Section 6, posting period, an emergency situation attributable to an "Act(s) of God" arises which requires the use of manpower on that holiday in excess of that posted pursuant to the Article 11, Section 6, full-time regular employees required to work in this circumstance(s) shall only be paid for such holiday work in accordance with Article 11, Sections 2, 3, and 4.

c. When a full-time regular employee scheduled to work on a holiday in accordance with the provisions of Article 11, Section 6, is unable to or fails to work on the holiday, the Employer may require another full-time regular employee to work such schedule and such replacement employee shall only be paid for such holiday work in accordance with Article 11, Sections 2, 3, and 4. The selection of such replacement employees shall be made in accordance with the terms of this Agreement.

d. A full-time regular employee required to work on a holiday which falls on the employee's regularly scheduled non-work day shall be paid at the normal overtime rate of one and one-half (1½) times the base hourly straight-time rate for work performed on such day. Such employee's entitlement to the holiday pay for the designated holiday shall be governed by the provisions of Article 11, Sections 2, 3, 5, and 6.

4. Hours worked on a holiday in excess of 8 hours shall be paid at the normal overtime rate of one and one-half (1½) times the base hourly straight time rate.
5. When a full-time regular employee works on his/her holiday, the employee will be guaranteed eight (8) hours of work or pay in lieu thereof, in addition to the holiday pay to which the employee is entitled under Article 11, Sections 2 and 3 language. This guarantee will be waived if the employee, with the concurrence of the Union and approval of Management, requests to be released early.
6. A schedule posted in accordance with Article 11, Section 6, shall be the full-time regular employee's schedule for that holiday. A full-time regular employee who works outside of the posted holiday schedule shall be paid at the rate of one and one-half (1½) times the base

hourly straight-time rate for the hour(s) worked outside the employee's posted schedule.

7. In no event shall a full-time regular employee receive more than one and one-half (1½) times the base hourly straight-time rate for hours actually worked on the employee's holiday in addition to payments prescribed in Article 11, Section 3.

**Question:** If management requires the wrong employee to work on a holiday, what is the remedy for the employee who worked?

**Answer:** The employee would be compensated an additional 50% at the straight-time rate for all hours worked.

**Question:** What guarantee does a full-time regular employee have if he or she does work on his/her holiday or designated holiday?

**Answer:** Full-time employees who work on their holiday or designated holiday are guaranteed eight hours of work or pay in lieu thereof. The guarantee may be waived if requested by the employee, concurred in by the union and approved by management.

**Question:** Are full-time regular employees entitled to work the hours as posted in the holiday schedule?

**Answer:** Yes. In fact, employees are entitled and required to work the scheduled hours as posted even if those are not the hours of their regular schedule.

Source: National Arbitration Award H8C-5D-C 15429, Arbitrator H. Gamser, October 25, 1982.

**Question:** If a part-time flexible employee who is properly scheduled to work on a holiday fails to report and a full-time regular employee is called in, is the full-time regular employee compensated only at the straight-time rate?

**Answer:** No. When a full-time employee replaces a part-time flexible employee on a holiday, the full-time regular employee would receive an additional 50% for each hour worked up to eight hours. Note that the language of Section 3.c of the MOU applies in circumstances where a full-time regular employee replaces another full-time regular employee.

Source: Step 4 Grievance NC-C 4322, dated April 14, 1977.

## ARTICLE 12 PRINCIPLES OF SENIORITY POSTING AND REASSIGNMENTS

### Section 12.1 Probationary Period

- A The probationary period for a new employee shall be ninety (90) calendar days. The Employer shall have the right to separate from its employ any probationary employee at any time during the probationary period and these probationary employees shall not be permitted access to the grievance procedure in relation thereto.

**Probationary Employees:** Career employees serving their probationary period are members of the bargaining unit and have access to the grievance procedure on all matters pertaining to their employment except separation. Management has a right to separate probationary employees at any time during their probationary period without establishing “just cause”. If separated during the probationary period, employees are not entitled to grieve the separation.

Furthermore, arbitrators have ruled on several occasions that grievances relating to the separation of probationary employees are not arbitrable.

A probationary employee who is separated during the probationary period is not entitled to access to the grievance-arbitration procedure in relation to that separation, even if claims of discrimination are alleged to be separate violations of Article 2 or Article 21. The union also has no right to pursue such a grievance on behalf of the probationary employee.

Source: National Arbitration Award H1C-4C-C 27352/27351, Arbitrator N. Zumas, dated September 23, 1985.

Neither the probationary employee nor the union has access to the grievance procedure in matters concerning an evaluation of work performance during the probationary period because the evaluation is a part of the decision to separate or not to separate the employee and grievances over separation of probationary employees are barred by Section 12.1A.

Source: National Arbitration Award H1C-5L-C 25010, Arbitrator N. Zumas, dated September 19, 1985.

Section 12.1A denies a probationary employee access to the grievance-arbitration procedure to challenge his/her separation on the grounds of alleged noncompliance by the Employer with the procedures governing the separation of probationary employees that are contained in Section 365.32 of the Employee and Labor Relations Manual. However, a dispute as to whether or not the Employer’s action separating the employee occurred during his/her probationary

period is arbitrable because that is a precondition to the applicability of Section 12.1A.

Source: National Arbitration Award Q98C-4Q-C 99251456, Arbitrator S. Das, dated September 10, 2001.

Employees who were serving their probationary period at the time of entry into active duty in the military service and who met the probationary time period while serving on active duty are considered as having met the probationary time.

Source: Handbook EL-312, Section 775.1c.

B The parties recognize that the failure of the Employer to discover a falsification by an employee in the employment application prior to the expiration of the probationary period shall not bar the use of such falsification as a reason for discharge.

**Falsification of Employment Applications:** This section provides that even if the Postal Service does not discover, during the probationary period, that an employee has falsified an employment application, the falsification may still be used as a reason for discharge. However, this section does not change the provisions of Article 16 (Section 16.1) requiring that non-probationary employees may only be disciplined for “just cause”.

C When an employee completes the probationary period, seniority will be computed in accordance with this Agreement as of the initial day of full-time or part-time employment.

A probationary employee does not have seniority. However, once the probationary period is satisfied, the employee’s seniority is computed from the date of employment. (Also see Section 12.2E)

D When an employee who is separated from the Postal Service for any reason is re-hired, the employee shall serve a new probationary period. If the separation was due to disability, the employee's seniority shall be established in accordance with Section 12.2, if applicable.

E MHAs who successfully complete at least **one** 360-day term will not serve a probationary period when hired for a career appointment, provided such career appointment directly follows an MHA appointment.

**Under the 2016 National Agreement, MHAs who successfully complete at least one 360-day term will not serve a probationary period when hired for a career appointment provided such career appointment directly follows an MHA appointment.**

## **Section 12.2 Principles of Seniority**

### **A Introduction**

- A1** The United States Postal Service and the National Postal Mail Handlers Union, AFL-CIO, a Division of the Laborers' International Union of North America, agree to the following seniority principles which replace all former rules, instructions, and practices.
- A2** This Article will continue relative seniority standing properly established under past principles, rules and instructions and this Article shall be so applied. If an employee requests a correction of seniority standing, it is the responsibility of the requesting employee to identify and restate the specific instructions, rule, or practice in support of the request.

It is the responsibility of the employee who requests a correction in his/her seniority standing to identify the specific instruction, rule, or practice that supports the request.

## **MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES POSTAL SERVICE AND THE NATIONAL POSTAL MAIL HANDLERS UNION, AFL-CIO**

### **Re: Article 12.1 – Probationary Period – Bidding**

**The parties agree to the following regarding bidding during a ninety calendar day probationary period:**

**Full-time career mail handlers who are serving a probationary period pursuant to Article 12.1 of the National Agreement and applicable memoranda of understanding are eligible to bid for vacant duty assignments in accordance with Article 12.3 of the National Agreement.**

**Seniority for full-time career mail handlers during their probationary period will be computed for the purpose of bidding pursuant to this agreement. This computation of such seniority does not create any additional obligation or entitlement for application of seniority not otherwise provided for in the National Agreement.**

**This MOU incorporates a recent change to the National Agreement, allowing career employees to bid for vacant duty assignments under Article 12 during their 90-day probationary period.**

## B Coverage

These rules apply to full-time and part-time fixed schedule employees. No employee, solely by reason of this Section shall be displaced from an assignment which the employee gained in accord with former rules.

Seniority rules are sometimes changed as part of a new National Agreement. Such changes, however, do not cause displacement of an employee from a job assignment.

## C Responsibility

The installation head is responsible for the day-to-day administration of seniority. Installation heads will post a seniority list of Mail Handlers on all official bulletin boards for that installation. The seniority list shall be corrected and brought up to date quarterly.

## D Definitions

### D1 Craft Group

A craft group is composed of those positions for which the Union has secured exclusive recognition at the national level.

### D2 Seniority Standing

D2a Seniority for full-time employees is computed from the date of appointment in the craft and continues to accrue so long as service in the craft (regardless of level) and installation is uninterrupted, except as otherwise provided herein.

D2b Seniority for part-time fixed schedule employees is computed from the date of appointment in this category of the work force and continues to accrue so long as service in the craft and category and installation is uninterrupted.

This category of employees, also known as part-time regulars (PTR), have their own seniority standing within their PTR group. Part-time regulars do not compete with full-time regulars for bid assignments or with part-time flexibles for conversion to full-time.

## **MEMORANDUM OF UNDERSTANDING**

**RE: RELATIVE STANDING OF MAIL HANDLER ASSISTANTS AND  
SUBSEQUENT SENIORITY UPON CONVERSION TO CAREER MAIL  
HANDLER**

**As part of the Fishgold Interest Arbitration Award issued in February 2013, hiring under the 2011 National Agreement into the Mail Handler craft is through the non-career position of Mail Handler Assistants (MHAs). The parties have agreed to the following principles regarding (a) the determination of relative standing for MHAs hired on or after October 4, 2014; and (b) the determination of seniority for MHAs who are converted to career positions in the Mail Handler craft on or after October 4, 2014.**

**Once hired as an MHA, each MHA's relative standing as an MHA, and thus each MHA's eventual conversion to a career position in the Mail Handler craft, is established based on their initial MHA appointment date. Any ties among MHAs who share the same initial appointment date in the same installation will be based on the following criteria (which represent a revised version of Section 12.2G8 of the National Agreement for these limited purposes):**

**G8 Except as otherwise specifically provided for in this MOU, when it is necessary to resolve a tie in relative standing or seniority between two or more newly hired Mail Handler craft employees, effective October 4, 2014 the following criteria shall apply in the order set forth below:**

**G8a Total continuous postal career service in the Mail Handler craft within the installation.**

**G8b Total postal career service in the Mail Handler craft within the installation.**

**G8c Total postal career service in the Mail Handler craft.**

**G8d Total postal career service within the installation.**

**G8e Total postal career service.**

**G8f Total Mail Handler Assistant service.**

**G8g Total postal non-career service.**

**G8h By the order ranked on the hiring list (as described in Handbook EL-312, Employment and Placement, Subchapter 43 part 436 and Subchapter 44).**

**MHAs will be converted to career positions in the Mail Handler craft in precisely the same order as the relative standing list. If more than one MHA is converted to career status on the same date in the same**

**installation, seniority ranking will be based on their position on the MHA relative standing list.**

**The terms of this MOU are effective as of October 4, 2014. The MOU will be applied both to MHAs hired on or after October 4, 2014, and to MHAs who are converted to career positions in the Mail Handler craft on or after October 4, 2014. Issues relating to the relative standing of MHAs initially appointed on or before October 3, 2014 and/or the seniority of MHAs converted to career positions in the Mail Handler craft on or before October 3, 2014 shall be governed by previous rules and regulations, and any disputes on these matters will be withdrawn.**

**The previous Question and Answer Number 27 signed by the parties on August 7, 2013 is amended as follows:**

**27. How does management determine which MHA will be converted to career when an opportunity exists?**

**Answer: MHAs will be converted to career based upon their relative standing in the installation, which is determined in accordance with the MOU Re: Relative Standing of Mail Handler Assistants and Subsequent Seniority Upon Conversion to Career Mail Handler, effective October 4, 2014. Upon conversion to career, there will be no further adjustment to seniority for all Mail Handlers converted to career on the same date in the same installation, so their relative standing as MHAs will control their seniority as career Mail Handlers.**

**Any disputes arising under this MOU Re Relative Standing of Mail Handler Assistants and Subsequent Seniority Upon Conversion to Career Mail Handler, shall be referred to the Article 12 Task Force for resolution, or if necessary to arbitration at the Regional/Area or National level depending on whether the dispute presents a nationally interpretive dispute of general application.**

**This MOU reflects the parties 2014 settlement agreement governing the relative standing of MHAs. It also governs the subsequent seniority of MHAs upon their conversion to career mail handler.**

#### **D3Duty Assignment**

A duty assignment is a set of duties and responsibilities within recognized positions regularly scheduled during specific hours of duty.

#### **D4Preferred Duty Assignments**

A preferred duty assignment is any assignment preferred by a full-time employee or a part-time fixed schedule employee within the employee's category.

It was not the intent of the parties who negotiated the National Agreement to have this contract language regarding Preferred Duty Assignments serve as a basis for allowing employees to select particular preferred duties (or tasks they would like to perform) from among the duties in the preferred duty assignments that they are awarded through the bidding procedure. However, the parties are responsible for adhering to provisions contained in existing agreements reached between local union and management officials.

Source: Step 4 Grievance H8M-1E-C 15324, dated April 15, 1981.

There is no contractual requirement within the National Agreement to give a full-time regular employee his/her choice of work assignments within his/her bid.

Source: Step 4 Grievance H1M-5L-C 6488, dated December 30, 1982.

#### D5Bid

A request submitted in writing, by telephone, or by computer to be assigned to a duty assignment by an employee eligible to bid on a vacancy or newly established duty assignment or a preferred assignment. Where telephone, computer, or other electronic bidding procedures are established, bids must be submitted by telephone, computer or other electronic methods as agreed to by the parties.

[See Letter, page 160]

The use of telephone, computer or other electronic bidding at an installation is the prerogative of the installation head. This provision of the Agreement does not mandate that telephone, computer or other electronic bidding be instituted at a particular installation. Where the installation head has implemented telephone, computer or other electronic bidding, however, it is mandatory that members of the Mail Handler craft use that system when submitting bids. Also see the Letter of Intent on this subject, which sets forth various rules governing the implementation of telephone bidding.

#### D6Application

A written request by a full-time employee or part-time fixed schedule employee within the employee's respective category for

consideration for an assignment for which the employee is not entitled to submit a bid.

This provision refers to those positions for which a mail handler is not entitled to bid, but rather for which he/she must apply. These include positions, if any, that are filled on a 'best qualified' basis (see Section 12.2H) and residual vacancies in the part-time fixed schedule category (see Section 12.3B2).

#### D7 Abolishment

A management decision to reduce the number of occupied duty assignment(s) in an established section and/or installation.

#### D8 Reversion

A management decision to reduce the number of duty assignment(s) in an installation when such duty assignment(s) is/are vacant.

A duty assignment is reverted if vacant or abolished if occupied.

#### D9 Residual Vacancy

A duty assignment that remains vacant after the completion of the voluntary bidding process.

#### E Relative Standing of Part-Time Flexibles

Part-time flexible employees and MHAs are placed on a part-time flexible or MHA roster, as appropriate, in the order of the date of their initial appointment in the installation. When changing such employees to full-time, they shall be taken in the order of their standing on the part-time flexible or the MHA roster.

These employees do not have seniority rights; however, their relative length of service shall be used for vacation scheduling and for purposes of conversion to full-time status.

When there is an opportunity for conversion to full-time status in an installation and that installation has both part-time flexible and MHA employees available for conversion, the PTFs will be converted to full-time regular prior to the conversion of the MHAs.

**Question: Does relative standing earned as an MHA in one installation move with an MHA who is separated and is later employed in another installation?**

**Answer: No.**

**Question: If an MHA goes from one installation to another installation (gaining installation) on the same date as one or more MHAs are appointed in the gaining installation, is the previously appointed MHA placed above the newly appointed MHAs on the relative standing list?**

**Answer: All of these MHAs at first would be tied because they share the same initial appointment date in the gaining installation, but then any ties would be broken and relative standing would depend on an application of the MOU Re Relative Standing of Mail Handler Assistants and Subsequent Seniority Upon Conversion to Career Mail Handler, dated September 2014.**

**Question: Does changing between crafts alter MHA standing on the roll?**

**Answer: Yes.**

**Question: How does management determine which MHA to terminate during the term when there is a lack of work?**

**Answer: Separations for lack of work shall be by inverse relative standing in the installation.**

**Question: When needed, how does management determine which MHA to bring back to work if the MHAs were separated for lack of work?**

**Answer: Reappointment should be by relative standing from the previous appointment. MHAs separated for lack of work before the end of their term will be given preference for reappointment ahead of other MHAs with less relative standing and ahead of other applicants who have not served as MHAs, provided that the need for hiring arises within twelve (12) months of their separation.**

**Question: How does management determine which MHA will be converted to career when an opportunity exists?**

**Answer: MHAs will be converted to career based upon their relative standing in the installation, which is determined by their initial MHA appointment date in that installation. Any ties among MHAs who share the same initial appointment date in the same installation will be based on the MOU Re Relative Standing of Mail Handler Assistants and Subsequent**

**Seniority Upon Conversion to Career Mail Handler, dated September 22, 2014, as amended on September 30, 2014, which is controlling.**

**Question: Does an MHA's standing on a roll carry over into career appointment?**

**Answer: No. The time worked as an MHA does not carry over if an MHA attains career status. They begin their initial period of seniority when they attain career status.**

**F Changes in Which Seniority is Lost**

Except as specifically provided elsewhere in this Agreement an employee begins a new period of seniority:

**F1** When the change is at the employee's request:

**F1a** From one postal installation to another, the employee will begin a new period of seniority as a part-time flexible, if such status is available in the installation.

**F1b** From another craft to the Mail Handler craft, the employee will begin a new period of seniority as a part-time flexible, if such status is available in the installation.

The provisions of Sections 12.2F1a and F1b set forth the rule that employees **will begin a new period of seniority** as a part-time flexible employee, **if such status is available in the installation**, when the employee voluntarily moves to another postal installation or voluntarily moves from another craft to the Mail Handler craft.

**F2** Upon reinstatement or reemployment.

**F3** Upon transfer into the Postal Service.

**G Changes in Which Seniority is Retained, Regained or Restored**

**G1** Reemployment After Disability Separation. On reinstatement or reemployment after separation caused by disability, retirement or resignation because of personal illness and the employee so stated in the employee's resignation and furnished satisfactory evidence for inclusion in the employee's personnel folder, the employee receives seniority credit for past service for time on the disability retirement or for illness if reinstated or reemployed in the same postal installation and craft and in the same or lower

salary level, from which originally separated; provided application for reinstatement or reemployment is made within six months from the date of recovery. The date of recovery in the case of disability retirement must be supported by notice of recovery from the Compensation Group, Office of Personnel Management, and in the case of resignation due to illness, by a statement from the applicant's attending physician or practitioner. When reinstatement is to the part-time flexible roster, standing on the roster shall be the same as if employment had not been interrupted by the separation.

On reinstatement or reemployment after separation caused by disability, retirement or resignation because of personal illness, the employee receives seniority credit for past service and for time on disability retirement or the period of illness provided that the following criteria are met:

- The employee stated in the resignation that the resignation was due to disability or illness and furnished satisfactory evidence for inclusion in his/her personnel folder.
- The employee is reinstated or reemployed in the same installation and craft and in the same or lower salary level from which originally separated.
- The application for reinstatement or reemployment is made within six months of the date of recovery.
- The date of recovery in the case of disability retirement is supported by notice of recovery from the Compensation Group, Office of Personnel Management; the date of recovery in the case of resignation due to illness is supported by a statement from the employee's attending physician or practitioner.

When reinstatement is to the part-time flexible roster, standing on that roster shall be the same as if employment had not been interrupted by the separation.

**G2** Restoration. On restoration in the same craft in the same installation after return from military service, transfer under letter of authority or unjust removal, employee shall regain the same seniority rights the employee would have if not separated.

When an employee returns to the Mail Handler craft in the same installation under the conditions indicated above, they regain the seniority that they had at the time of separation and are also given seniority credit for the time that they

were separated. In other words, they would be returned to the seniority list with the same seniority date that they originally had at the time of the separation.

A part time flexible would be returned to a position on the part-time flexible roll as if they had never separated. If all the part-time flexible employees above the employee on the PTF roll at the time of the employee's separation have since been converted to full-time, the employee would be placed at the top of the roll and would be converted to full-time at the next opportunity.

For further information regarding the specific rules governing employment restoration after military service, refer to Section 77 of Handbook EL-312.

G3 When an employee changes from another craft to the Mail Handler craft involuntarily, the employee will begin a new period of seniority.

Except as provided in the next paragraph, when an employee changes from another craft to the mail handler craft involuntarily, the employee begins a new period of seniority under Section 12.2G3. For example, if a full-time clerk had been involuntarily reassigned to the mail handler craft, under Section 12.6C5, effective October 1, 1990, that clerk would have been placed in the mail handler craft with a seniority date of October 1, 1990.

Sources: Letters, NPMHU to USPS, dated September 25, 1990, and USPS to NPMHU, dated October 16, 1990.

If an employee is reassigned to the Mail Handler craft pursuant to Article 13 of either the APWU or NALC National Agreement, the provisions of Article 13 (Section 13.6A and B) apply as appropriate.

G4 Reassignment and Return in 90 Days. **Beginning on the effective date of the 2016 National Agreement, a Mail Handler who is voluntarily reassigned to another craft in the same installation with or without a change in grade level and who is subsequently voluntarily reassigned within 90 days back to the Mail Handler craft shall regain the seniority previously acquired as a Mail Handler, which shall not include the period of intervening employment in the other craft.**

A mail handler who is reassigned voluntarily to another craft and voluntarily returns to the Mail Handler craft within the same installation within 90 days, regains the seniority previously attained **as a Mail Handler, minus the period of the intervening employment in the other craft.**

G5 Failure to Meet Qualification Standards. When an employee is returned to the Mail Handler craft for not being able to meet the qualification standards for a job in the same installation, the employee shall regain former Mail Handler seniority.

If an employee is returned to the Mail Handler craft due to failure to meet the qualification for a position in the same installation, the employee regains the seniority the employee had in the Mail Handler craft; that employee's seniority is not augmented by the intervening employment. However, should the employee fail to meet the qualification for a position in another installation and return to the Mail Handler craft in the former installation, the employee would begin a new period of seniority.

G6 Any Mail Handler involuntarily moving from one postal installation to another postal installation shall have seniority established as of the employee's time in the Mail Handler craft.

This provision is somewhat misleading in that only full-time and part-time regular mail handlers are involuntarily reassigned from one installation to another in the Mail Handler craft with their seniority. If a part-time flexible employee is involuntarily reassigned from one installation to another in the Mail Handler craft pursuant to Section 12.6C7b, the employee is placed at the foot of the part-time flexible roll and does not regain his/her seniority until converted to full-time.

**Any senior employee in the same occupational group in the same installation may elect to be reassigned to the gaining installation and take the seniority of the senior full-time employee subject to involuntary reassignment. Such senior employees who accept reassignment to the gaining installation do not have retreat rights. Article 12.2G6 does not apply to senior in lieu of volunteers.**

**Source: Step 4 E11M-1E-C 13256828, dated June 27, 2014.**

G7 An employee who left the bargaining unit on or after July 21, 1973 and returns to the bargaining unit:

G7a will begin a new period of seniority if the employee returns from a position outside the Postal Service; or

G7b will begin a new period of seniority if the employee returns from a non-bargaining unit position (i.e., a position outside of the bargaining units that were covered by the 1978 National Agreement) within the Postal Service, unless the employee returns within 2

years from the date the employee left the unit except as follows:

G7b1 An employee who left the craft and/or installation after the date of the issuance of the arbitration award determining the terms and conditions of the 1994 National Agreement, and returns to the craft and/or installation, will begin a new period of seniority unless the employee returns within 1 year from the date that the employee left the craft and/or installation.

G7b2 The seniority for an employee returning, within one year, under G7b1 above shall be established after reassignment as the seniority the employee had when he/she left minus seniority credit for service outside the craft and/or installation.

The provisions of Section 12.2G7 apply when an employee leaves the bargaining unit for a position outside of the Postal Service or for a position in a supervisory or managerial position within the Postal Service. These provisions have no application to a Mail Handler who leaves the bargaining unit for a position in another nationally-recognized bargaining unit within the Postal Service, such as those bargaining units represented by the APWU and NALC. New language in the 2006 National Agreement confirms the parties' prior understandings on this point.

There are different seniority rules depending on the date on which the employee left the bargaining unit, as outlined hereunder.

**Beginning April 25, 1996:**

For employees who left the craft and/or installation after April 24, 1996 and later returned to the craft and/or installation, seniority is established as follows:

- An employee returning from a position outside the Postal Service would begin a new period of seniority.
- An employee returning from a non-bargaining unit position after one (1) year would begin a new period of seniority.
- An employee returning from a non-bargaining unit position within one (1) year would regain the seniority the employee had in the craft without credit for the time the employee spent in the non-bargaining unit position.

**July 21, 1973 to April 24, 1996:**

This provision provides the rules for establishing the seniority of employees who left the bargaining unit during the period from July 21, 1973 to April 24, 1996 and later returned to the same craft. They shall have seniority as specified in the 1990-1994 National Agreement which would be established as follows:

- An employee returning from a position outside the Postal Service would begin a new period of seniority.
- An employee returning from a non-bargaining unit position after two (2) years would begin a new period of seniority.
- An employee returning from a non-bargaining unit position within two (2) years would regain the seniority the employee had in the craft without credit for the time the employee spent in the non-bargaining unit position.

**Prior to July 21, 1973:**

While the current National Agreement is silent on situations where employees left the bargaining unit prior to July 21, 1973 and later returned to the same craft, the rules for establishing seniority for such employees were specified in the 1971-1973 National Agreement. Seniority would be established as follows:

- An employee returning from a position outside the Postal Service would begin a new period of seniority.
- An employee returning to the same craft would regain the seniority the employee had in the craft without credit for the time spent outside the craft.

Employees serving as temporary supervisors (204b) accumulate craft seniority during those periods in which they serve as temporary supervisors.

Source: National Arbitration Award N8-NA-0383, Arbitrator R. Mittenthal, dated April 23, 1981.

A former supervisor who left the Mail Handler craft and/or installation after April 24, 1996 and who returns to the craft more than one year after he/she accepted the promotion, has his/her seniority established one day junior to the seniority of the junior part-time flexible and is reassigned as a part-time flexible. (Note that, employees who left the craft on or before April 24, 1996, could retain their seniority, minus credit for service outside the craft or installation, if they returned within two years.)

Sources: Step 4 Grievance H4M-5C-C 17168, dated November 6, 1986, and National Arbitration Award H7N-4U-C 3766 et al, Arbitrator C. Snow, dated August 13, 1990.

G8 Except as otherwise specifically provided for in this Agreement, effective the date of this Agreement, when it is necessary to resolve a tie in seniority between two or more Mail Handler craft employees, the following criteria shall apply in the order set forth below:

G8a Total continuous postal career service in the Mail Handler craft within the installation.

This refers to all current service within the Mail Handler craft within the same installation without a break.

G8b Total postal career service in the Mail Handler craft within the installation.

This refers to all service in the Mail Handler craft within the same installation including any time in the craft that may have been accrued prior to leaving and then returning to the craft.

G8c Total postal career service in the Mail Handler craft.

This includes all time in the Mail handler craft including time in the Mail Handler craft in other installations.

G8d Total postal career service within the installation.

This includes all career service within the installation including career service outside of the Mail Handler craft.

G8e Total postal career service.

This includes all career Postal Service without regard to craft or installation.

G8f Total Federal service as shown in the service computation date.

The leave computation date, currently found in Box 14 of PS Form 50, is used to determine “total federal service.”

Source: Step 4 Grievance E98M-11-C 00222755, dated January 23, 2003.

G8g Numerical by the last 3 or more numbers (using enough numbers to break the tie but not fewer than 3 numbers) of the employee's social security number, from the lowest to highest.

The employee with the lowest number is placed highest among the group to whom the tie-breaking process is being applied.

G9 Effective January 1, 2007, any Mail Handler who voluntarily transfers from one postal installation to another postal installation, and is subsequently accepted for voluntary transfer back to the original postal installation within one (1) year, shall have seniority established as the seniority that the employee had when she/he left the original installation minus credit for service for the time away from that installation.

Employees voluntarily transferring from one installation to another on or after January 1, 2007, and who subsequently are accepted for a voluntary transfer back to the original installation within one year, regain their seniority in the original installation minus the time spent away from that installation.

H All positions presently in the Mail Handler craft, including higher level positions, shall be filled by the senior qualified bidder meeting the qualification standards for the position, except that those positions which are presently designated best qualified shall be filled by the best qualified applicant.

H1 Key and Standard Positions Assigned to the Mail Handler Craft

H1a Key Position

Mail Handler, MH 4, KP 8

H1b Standard Positions

Group Leader Mail Handler, MH 5, SP1-33

Label Printing Technician, MH 5, SP2-578

Label Machine Operator, MH 4, SP2-579

\*Laborer, Materials Handling, MH 3, SP1-11

Mail Handler Equipment Operator, MH 5, SP2-21

Mail Equipment Handler, MH 4, SP2-247

Mail Handler Technician, MH 5, SP2-498

Mail Processing Machine Operator,

MH 5, SP2-354

Mail Processing Machine Operator,  
MH 5, SP2-470

Packer-Shipper, MH 4, SP2-581

\*When the "Laborer, Materials Handling" position is authorized for the post office branch, it is delegated to the Mail Handler Craft. When authorized for the Maintenance Branch it is assigned to the Maintenance Craft.

Sack Sorting Machine Operator, MH 4, SP2-367

Sack Sorting Machine Operator, MH 5, SP2-438

Typist-Label Printing, MH 4, SP2-580

Computer Print Line Production Operator, MH 5, SP2-632

Mail Rewrapper, MH 4, SP2-9

H2 Individual Positions Assigned to the Mail Handler Craft:  
Group Leader Mail Handlers, MH 6, IP248-7, 2315-02,  
Group Leader Sack Sorter Machine Operator, MH 6,  
IP25-11-1, 2315-28, Mail Handler Leadman, MH 5,  
IP32-12-1, 2315-80.

When a duty assignment within an Individual Position (IP) becomes vacant, it should not be posted; rather, it should be reverted.

H3 All Mail Handler employees of Level MH-5 may bid for the position of Examination Specialist, SP2-188.

[See Letter, page 161]

Even though the position of Examination Specialist is a Clerk craft position, it is open to all qualified bidders, installation-wide, regardless of craft.

I Filling Positions Reevaluated as One of the Positions Reserved for Bidding by MH 4's, MH 5's and MH 6's.

- I1 When an occupied level 4 or 5 position is upgraded on the basis of the present duties:
  - I1a The incumbent will remain in the upgraded job provided the incumbent has been in that job for more than one year.
  - I1b The job will be posted for bid in accordance with the Agreement if the incumbent has not been in the job for more than one year.
- I2 When an occupied level 4 or 5 position is upgraded on the basis of duties which are added to the position:
  - I2a The incumbent will remain in the upgraded job provided the incumbent has been in that job for more than one year. The year of required incumbency in the job begins when the employee first begins working the assignment.
  - I2b The job will be posted for bid in accordance with the Agreement if the incumbent has not been in the job in accordance with .2I2a, above.
- I3 When management places automatic equipment in an office and an employee is assigned to operate the equipment, the time the employee spends on this job before it is ranked established shall be counted as incumbency in the position for the purpose of being upgraded or assigned.

These provisions govern incumbency rights when the appropriate Postal authority (normally at the National level) reevaluates and upgrades a position based on the present duties of the position (I1) or based on duties that are added to the position (I2); all duty assignments within that position description are affected. It does not apply to the replacement or addition of an assignment when the new duty assignment requires an established position that is ranked at a higher grade. Such newly established duty assignments shall be posted for bid pursuant to Section 12.2B3.

Source: Step 4 Grievance B98M-1B-C 00022520, dated September 8, 2000.

If a position is reevaluated to a higher level, the lower level assignment that was upgraded would be considered abolished.

### **Section 12.3 Principles of Posting**

- A To insure a more efficient and stable work force, an employee may be designated a successful bidder no more than **nine (9)** times during the duration of this Agreement unless such bid:
- A1 is to a job in a higher wage level;
  - A2 is due to elimination or reposting of the employee's duty assignment; or
  - A3 enables an employee to become assigned to a station closer to the employee's place of residence. It is the responsibility of the employee bidding to notify management that the employee is bidding "closer to home."

The period for counting bids under the **2016** National Agreement began on **May 21, 2016**, the day after expiration of the **2016** National Agreement.

**Question: What is the timeframe for a career mail handler to use his or her successful 9 bids?**

**Answer: The 9 bids will be from the expiration of the previous contract (May 21, 2016) through the end of the current contract (September 20, 2019).**

This provision provides that bargaining unit employees can be designated successful bidder no more than **nine (9)** times during the life of this contract. However, there are three (3) exceptions and the exceptions apply beginning with the first successful bid. For example, if the employee's second successful bid during the life of the Agreement was necessitated due to their assignment being reposted due to a schedule change, that bid would not count against the **nine (9)** successful bid limit and the employee would still be entitled to at least **eight (8)** more successful bids during the life of the Agreement.

Source: Step 4 Grievance H1C-3P-C 36488, dated April 3, 1986.

With regard to telephone bids, even when an employee has reached his or her successful bid limit, the telephone bidding system will allow bids to be entered. Those bids are flagged by the system as "ineligible."

As noted in the new contract language, it is the responsibility of the employee bidding to notify management that the employee is bidding "closer to home." Management then will change the bid(s) to "eligible." If the bidder is successful, the bidder will get his/her additional successful bid.

Management will routinely review job bidding reports prior to awarding the duty assignment to a successful bidder. Part of this process is to investigate the ineligible bids. There are other situations (e.g., when an employee's job is abolished) where the bid count also must be manually adjusted to make the bids eligible.

Source: Letter Re Implementation of Telephone Bidding System.

B In the Mail Handler Craft, Vacant Craft Duty Assignments Will Be Posted for Bid as Follows:

B1 Full-time and part-time fixed schedule employees will only bid for vacant assignments within their own category.

Only full-time employees may bid for full-time assignments and only part-time regular employees may bid for part-time regular assignments.

B2 Full-time employees may apply for residual vacancies in the part-time fixed schedule category, and selection from such applicants shall be based on senior employee meeting the qualification standards.

Under this provision, full-time regular mail handlers may apply for residual vacancies having a part-time fixed schedule. The senior full-time regular employee who meets the qualification standards will be selected. See further the MOU Re Conversion of Mail Handler Craft Employees on page 116 of the 2006 National Agreement.

The selected employee's seniority would be computed in accordance with Section 12.2D2b, which provides that seniority begins on the date of appointment as a part-time fixed schedule employee and continues to accrue as long as service in the craft, the part-time fixed schedule category, and the installation is uninterrupted.

Source: Downes Memorandum Re Part-Time Regular Mail Handlers, dated October 2, 1986.

B3 All vacant or newly established craft duty assignments shall be posted for employees eligible to bid. **Vacant duty assignments will be posted within 28 days of the date the assignment becomes vacant unless** a determination has been made that the position is to be reverted. **If the vacant assignment is reverted, a notice shall be posted within that same 28 day period** advising of the action taken and the reasons therefor. In addition, a copy of the notice shall be provided to the appropriate Union representative.

[See Letter, page 162]

**All vacant duty assignments must be posted for bid within 28 days, unless management determines that the position is to be reverted.** This provision

requires the Employer to provide the appropriate Union official with a copy of the notice indicating that a bargaining unit assignment is being reverted. A separate Letter of Intent printed at page 162 of the **2016** National Agreement provides that the only remedy that the Union has relative to a failure to provide such notice is the preservation of the Union's right to grieve such reversion until such time as the Union receives the notice.

B4 When it is necessary that fixed scheduled day(s) of work in the basic work week for a craft assignment be permanently changed, the affected assignment(s) shall be reposted. The change in work days shall not be effected until the job has been posted.

The change in non-scheduled days will not actually take place until the assignment is actually posted for bid.

When it is necessary that the fixed scheduled day(s) of work in the basic work week for a part-time regular craft assignment be permanently changed, the provisions of Section 12.3B4 will be followed.

Source: Memorandum of Understanding, dated September 22, 1988.

B5 The determination of what constitutes a sufficient change of duties, or principal assignment area, to cause the duty assignment to be reposted shall be subject to local negotiations in accordance with local implementation provisions of this Agreement.

The results of local implementation under this provision should not be inconsistent or in conflict with the provisions contained in Section 12.3B7 hereunder.

B6 No assignment will be posted because of change in starting time unless the change exceeds an hour. Any change in starting time that exceeds one (1) hour shall be posted for bid, except when there is a permanent change in starting time of more than one hour and up to and including four hours, the incumbent shall have the option to accept such new reporting time. If the incumbent does not accept the new reporting time, the assignment will be posted for bid.

If the change in starting time is **more than four hours**, the incumbent does not have the option to accept a new starting time and the assignment must be posted for bid.

When it is necessary that the starting times in the basic work week for a part-time regular craft assignment be permanently changed, the provisions of Section 12.3B6 will be followed.

Source: Memorandum of Understanding, dated September 22, 1988.

B7 Change in duty assignment, as specified below, will require reposting:

B7a A 50% change in duties (actual duties performed).

B7b A change in principal assignment area which requires reporting to a different physical location; i.e., station, branch, facility annex, etc., except the incumbent shall have the option to accept the new assignment.

As an example of the application of Section 12.3B7b, assume that an annex facility is opened and certain assignments are transferred to the annex. The incumbents would have the option of accepting the newly located assignments if there is no requirement to repost subject to B4 (change of days), B6 (change of hours) or B7a (change in duties) above.

B8 Vacant full-time Mail Handler assignments shall be posted for a period of ten (10) days.

B9 The installation head shall establish a method for handling multiple bidding on duty assignments which are simultaneously posted.

For paper bids, the method established by the installation head may include the use of Form 1717A, which allows an employee to list multiple bids on the same sheet in preferred order. For telephone bids, the current system allows the employee to indicate an order of preference when making multiple bids.

B10 An employee may withdraw a bid on a posted assignment, in writing or in the telephone or computerized bidding process, at any time before the closing time (hour and date) of the posting. Such withdrawal, to be official, shall be date stamped or processed by telephone or computer with confirmation.

Where telephone bidding is used, employees will withdraw their bid using the telephone system.

B11 An unassigned full-time employee may bid on full-time duty assignments posted for bid by employees in the Mail Handler craft. An unassigned full-time employee may be assigned to any vacant duty assignment. Such employee shall be given a choice if more than one vacant assignment is available. When the number of unassigned full-time employees exceeds the number of residual vacant duty assignments, the senior unassigned employee(s) may elect to remain unassigned provided that an unassigned regular

making this election is not the only unassigned regular who can fill a higher-level position without promotion or is not the only unassigned regular qualified for a residual assignment. Part-time fixed schedule employees shall be treated similarly within their own category.

Except in cases where the installation is under withholding, if no qualified unassigned full-time regular employee is available to be assigned to the residual vacancy, the senior part-time flexible employee in the installation will be converted to full-time regular and assigned to this residual vacant duty assignment. This provision is applicable to residual vacancies remaining from any bid posting after June 1, 2007.

This provision governs the bidding rights and assignment procedures for unassigned regulars. If, for example, there are three residual vacancies and there are five unassigned employees, two of the unassigned employees may decline assignment to a residual vacancy as long as there is a junior unassigned employee that can be assigned to the vacant assignment. This election cannot be made if that junior employee would have to be promoted while the senior employee would not or if the senior employee was qualified for the position and the junior employee was not.

**The issues in these grievances are whether a light/limited duty employee can be assigned to a residual vacancy that he or she cannot physically perform.**

**The parties agree that an unassigned light/limited duty employee cannot be assigned to a residual vacancy unless the employee is able to perform the core functions of the position, with or without reasonable accommodation.**

**Source: Step 4 Grievances C00M-1C-C 05179842, C00M-1C-C 06002195, and K00M-1K-C 05016441, dated December 18, 2011.**

Beginning with bid postings after June 1, 2007, and except for those installations that are under withholding, the senior part-time flexible employee will be converted to full-time regular and assigned to a remaining residual vacant duty assignment if there is no qualified unassigned full-time regular employee available to be assigned to that residual vacancy. The senior part-time flexible employee cannot refuse the conversion to full-time status, and the conversion should occur in the usual course, even in December.

## **MEMORANDUM OF UNDERSTANDING FILLING OF RESIDUAL VACANCIES**

**The parties agree to apply the following procedures, during the term of the 2016 National Agreement, concerning filling of Mail Handler Craft residual vacant duty assignments not subject to withholding pursuant to Article 12.**

**In accordance with Article 12.3B3, all vacant duty assignments will be posted within 28 days of the date the assignment becomes vacant unless a determination has been made that the position is to be reverted. If that vacant duty assignment is posted, goes unbid, and becomes residual, that residual duty assignment will be filled in accordance with this Memorandum of Understanding.**

**If and when management decides to revert an assignment, a notice shall be posted within ten (10) days advising of the action taken and the reason(s) therefore. Assignments that are not reverted shall be filled in accordance with this MOU. The Postal Service at the National level shall provide the Union at the National level with reports, as they become available, listing the number of residual vacant assignments.**

**Under the terms of this MOU, residual duty assignments that are not subject to a proper withholding pursuant to Article 12 will be filled by assigning employees in the following order:**

- 1. Unassigned regular mail handlers in the same installation.**
- 2. Employees with mail handler retreat rights to the installation pursuant to Article 12.**
- 3. Convert part-time flexible mail handlers within the installation to full-time regular, up to the number of residual vacancies.**
- 4. Convert part-time regulars within the installation who have requested in writing to become full-time, up to the number of residual vacancies remaining. Management has the right to reject the next eligible senior part-time regular employee but must show cause for doing so, and any such action is grievable by said employee.**
- 5. Full time regular mail handler employees, by seniority, with priority consideration in eReassign.**
- 6. All qualified bargaining unit applicants per the MOU Re: Transfers without priority consideration, on a first-in, first-out basis. These reassignment (transfer) requests will be made with the normal considerations contained in the MOU Re: Transfers. The number of career reassignments allowed under this paragraph including**

**those in paragraph 5 above is limited to one in every four full-time opportunities filled in offices of 100 or more work years and one in every six full-time opportunities filled in offices of less than 100 work years.**

**However, concurrent with filling these vacancies through the MOU Re: Transfers, management shall convert Mail Handler Assistants (MHAs) within the installation to career status by relative standing. In order to expedite the process of filling vacancies, management may fill three of four full-time opportunities or five of six full-time opportunities, as applicable, without waiting for completion of the transfer process.**

**Each residual vacant duty assignment shall be filled as soon as practicable.**

**The use of MHAs will not invoke the provisions of Article 7.3 and/or the second paragraph of Article 12.3B11 of the National Agreement.**

**Employees moving between installations pursuant to the terms of this agreement are solely responsible for any and all costs related to relocation.**

**An employee accepting a voluntary reassignment (transfer) or a part-time regular converting to a full-time regular under this MOU will begin a new period of seniority.**

**This MOU is effective through the expiration of the 2016 National Agreement, unless extended by agreement of the parties or continuation of the 2016 National Agreement during impasse procedures.**

**This MOU is non-precedential and is reached without prejudice to the position of either party in this or any other matter. It may be cited only to enforce its terms.**

**Any disputes regarding application of this MOU will be sent to the Article 12 Task Force for resolution.**

**This new MOU in the 2016 National Agreement incorporates the substance of the terms of the prior MOU re Filling Residual Vacancies, with some minor changes. The original MOU was signed in August 2015, and this version provides clear direction to local parties on how to fill vacant career Mail Handler jobs. In practice, the conversion should work as follows:**

Once management makes a determination not to revert the position, management will confirm that there are no career employees (following the appropriate bidding process) to fill this vacancy, thereby creating a residual vacancy which is available to be filled by the following employees in this order:

- Unassigned regulars in the installation
- Mail Handlers with retreat rights that were exceeded out
- Converting a PTF in an under 200 man year facility
- Converting a PTR requesting conversion to full-time status within his/her own installation
- Transferring an employee with a “priority” consideration for transfer in eReassign
- Transferring other career employees seeking transfer (in accordance with MOU on Transfers) – 1 in 4 for installations with 100+ man years, and 1 in 6 for smaller installations
- Converting MHAs to career (in concurrence with the eReassign process)

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE UNITED STATES POSTAL SERVICE  
AND  
THE NATIONAL POSTAL MAIL HANDLERS UNION**

**Re: Demotion of EAS/Management Employees or Reinstatement of Former Employees into Mail Handler Craft**

The parties agree that the Memorandum of Understanding, Re: Filling of Residual Vacancies between the Postal Service and the National Postal Mail Handler Union does not change current rules or practices on the demotion of EAS/management employees into the mail handler craft or the reinstatement of former employees into the mail handler craft. The parties further agree that the National Agreement and the arbitration award issued by Carlton Snow on August 13, 1990 in Case No. H7N-4U-C 3766 shall govern status and seniority when an EAS/management employee is involuntarily or voluntarily placed in the mail handler craft.

If issues remain after any demotion or reassignment covered by this MOU, they will be referred to the Article 12 Task Force for discussion and possible resolution.

This MOU reaffirms management’s right to demote an EAS employee or to reinstate a former employee into the mail handler craft without having to go through the steps of the MOU: Re Filling of Residual Vacancies. The

**employee's status and seniority will be in accordance with the arbitration award issued by Carlton Snow dated August 13, 1990.**

B12 Mail Handlers temporarily detailed to a supervisory position (204b) or detailed to an EAS position may not bid on or be assigned to any vacant mail handler duty assignments while so detailed. However, nothing contained herein shall be construed to preclude such temporarily detailed employees from voluntarily terminating a 204b or EAS detail and returning to their craft position. **After returning** to the craft position, such employees may exercise their right to bid on vacant mail handler craft duty assignments.

The duty assignment of a full-time or part-time regular mail handler detailed to an EAS position or a supervisory position, including a supervisory training program, in excess of 120 consecutive days shall be declared vacant and shall be posted for bid in accordance with this Article. Under such circumstances, the employee shall not be eligible to re-bid the next posting of that assignment. Upon return to the craft, the mail handler will become an unassigned full-time or part-time regular mail handler with a fixed schedule. A mail handler temporarily detailed to an EAS position or a supervisory position will not return or be returned to the craft solely to circumvent the provisions of Section 12.3B12. An employee detailed to an EAS position or supervisory position must return to the craft for a minimum of **one continuous pay period** to prevent circumvention of the intent of this provision.

Form 1723, Notice of Assignment, shall be used in detailing mail handlers to temporary supervisor positions (204b) or EAS detailed positions. The Employer will provide the Union at the local level with a copy of Form(s) 1723 showing the beginning and ending of all such details.

- **A mail handler temporarily detailed to a supervisory or EAS position may voluntarily terminate the detail and return to his\her craft position;**
- **The contract specifically states that a mail handler “temporarily detailed to an EAS position or a supervisory position will not return or be returned to the craft solely to circumvent the provisions of Section 12.3B12.” This provision prohibits such circumvention with regard to all of the provisions contained in Section 12.3B12;**
- **After returning to the craft position, the mail handler who was detailed may bid on or be assigned to a vacant mail handler duty assignment;**

- **The return to the craft position must last for a minimum of one (1) continuous pay period to prevent circumvention of Article 12.3B12;**
- **During that one (1) continuous pay period, the mail handler may take paid or unpaid leave, but in no event shall the mail handler be in a leave status the entire pay period;**
- **For bidding purposes, the one (1) continuous pay period must be met prior to the date of posting the award notice of the successful bidder;**
- **If the mail handler's detail, including a supervisory training program, exceeds 120 consecutive days, the duty assignment of that full-time or part-time regular mail handler shall be declared vacant and shall be posted for bid;**
- **Should the employee's duty assignment be vacated after 120 consecutive days on an EAS or supervisory detail, then the mail handler is not eligible to re-bid the next posting of that assignment and the mail handler becomes an unassigned regular with a fixed schedule upon return to the craft;**
- **If the mail handler returns or is returned to the craft position, to avoid the duty assignment being declared vacant and being reposted, the one (1) continuous pay period must begin prior to the end of the 120 days.**

**Question:** Can an employee temporarily detailed to an EAS position, including a supervisory position (204b), whose duty assignment is vacated after working such detail in excess of 120 consecutive days, and who will become an unassigned regular upon return to the craft, be assigned to a residual vacancy while still temporarily detailed to the EAS or supervisory position?

**Answer:** No. In these circumstances, the employee may not be placed into the vacant residual duty assignment until he/she returns to the craft and becomes an unassigned mail handler employee.

Source: Step 4 Grievance C94M-4C-C 97008282, dated January 30, 1997.

The Employer is required to provide the Union at the local level with a copy of Form(s) 1723 showing the beginning and ending times of all details of mail handlers to EAS positions or temporary supervisor (204b) positions. Such copies of Form 1723 should be provided to the Union in advance of the detail or a modification thereto.

Source: Step 4 Grievance H4N-4U-C 26041, dated May 22, 1987.

The beginning and ending dates of the EAS or 204b assignment contained in the Form 1723 are effective unless otherwise amended by a premature termination of

the higher level assignment. Management may prematurely terminate an EAS or 204b detail by furnishing an amended Form 1723 to the appropriate union representative. In such cases, the amended Form 1723 should be provided in advance, if the union representative is available; otherwise, the form shall be provided to the union representative as soon as practicable after he/she becomes available.

Sources: Step 4 Grievances, Unnumbered, dated December 31, 1985 and Pre-arbitration Settlement H1N-5H-C 26031, dated January 12, 1989.

A mail handler in an EAS or a temporary supervisor (204b) detail may bid for the multi-craft position of Examination Specialist because that position is not a “vacant mail handler duty assignment” within the meaning of Section 12.3B12.

Source: National Arbitration Award H1N-4J-C 8187, Arbitrator B. Aaron, dated March 19, 1985.

### C Place of Posting

The notice inviting bids for a craft assignment shall be posted on all official bulletin boards at the installation where the vacancy exists, including stations, branches and sections. Copies of the notice shall be given to the designated agent of the Union. When an absent employee has so requested in writing, stating the employee's mailing address, a copy of any notice inviting bids shall be mailed to the employee by the installation head. Posting and bidding for preferred duty assignments shall be installation-wide unless otherwise specified by local Agreement.

This posting requirement does not apply to the sectional bidding process set forth in Sections 12.6C4c and .6C4d3.

### D Information on Notices Inviting Bids

Notices Inviting Bids shall include:

- D1 The duty assignment (as defined in section 12.2D3, if applicable) by position title and number; e.g., key, standard, or individual position.
- D2 PS or MH salary level and craft.
- D3 Hours of duty (beginning, ending).
- D4 The principal assignment area; e.g., section and/or location of activity.

- D5 Qualification standards and occupational code number.
- D6 Physical requirement(s) unusual to the specific assignment (heavy lifting, etc.).
- D7 Invitation to employees to submit bids.
- D8 The fixed schedule of days of work.

E Successful Bidder

- E1 Within 10 days after the closing date of the posting (including December), the installation head shall post a notice stating the successful bidder and the bidder's seniority date. The senior qualified bidder meeting the qualification standards established for that position shall be designated the "successful bidder."
- E2 The successful bidder must be placed in the new assignment within 15 days except in the month of December.

During the month of December, management may defer placing the successful bidder into the new assignment beyond 15 days.

An inability to work overtime does not necessarily prohibit an employee from performing his or her normal assignment. Accordingly, such an individual working with such a restriction is not necessarily on "light duty." Employees restricted from working overtime may bid on and receive assignments for which they can perform a regular eight hour assignment.

Source: National Arbitration Award H1C-5K-C 24191, Arbitrator C. Snow, dated April 29, 1991.

- E3 Normally, an employee shall work the duty assignment for which the employee has been designated the successful bidder. However, when an employee is moved off the employee's duty assignment, the employee shall not be replaced by another employee. For temporary reassignments not covered by Article 25, the movement of people outside the bid assignment area will be as follows:

E3a casuals;

**E3b employees from other crafts performing work in accordance with Articles 7 or 13;**

E3c **MHAs**

- E3d part-time flexible employees;
- E3e part-time regular employees;
- E3f full-time regular Mail Handler employees;
- E3g the order of movement of full-time regular Mail Handler employees in .3E3, above shall be a subject for local negotiations; however, if an agreement is not reached at the local level, the matter will be referred to the Area Manager, Human Resources and the Regional Director, Mail Handlers Union for settlement.

When it becomes necessary to move an employee from their duty assignment, such move will be accomplished in accordance with Section 12.3E3.

Source: Step 4 Grievance H4M-2U-C 6165, dated November 10, 1987.

**Changes made in the 2016 National Agreement make clear that employees from other crafts who may be performing work in accordance with the cross-craft provisions of Articles 7 or 13 must be moved off of their assignments before MHAs.**

- E4 Except as otherwise provided by this Agreement, no employee shall be allowed to displace or "bump" another employee properly holding a position or duty assignment.

#### **Section 12.4 Definition of a Section**

The Employer and the Union shall define sections in accordance with the local implementation provision of this Agreement. Such definition will be confined to one or more of the following:

- A pay location;
- B by floor;
- C tour;
- D job within an area;
- E type of work;
- F by branches or stations;

G the entire installation;

H incoming;

I outgoing.

Section 12.4 explains how a “section” may be defined in the Local Memorandum of Understanding provided for in Article 30.

### **Section 12.5 Principles of Reassignments**

- A A primary principle in effecting reassignments will be that dislocation and inconvenience to employees in the regular work force shall be kept to a minimum, consistent with the needs of the Service. Reassignments will be made in accordance with this Section and the provisions of Section 12.6 below.
- A1 When a major relocation of employees is planned in major metropolitan areas or due to the implementation of national postal mail networks, the Employer will apply this Article in the development of the relocation and reassignment plan. At least 90 days in advance of implementation of such plan, the Employer will meet with the Union at the national level to fully advise the Union how it intends to implement the plan. If the Union believes such plan violates this Agreement, the matter may be grieved.
- A2 Such plan shall include a meeting at the regional/area level in advance (as much as six months whenever possible) of the reassignments anticipated. The Employer will advise the Union, based on the best estimates available at the time, of the anticipated impact; the numbers of employees affected; the locations to which they will be reassigned; and, in the case of a new installation, the anticipated complement by tour. The Union, at the Regional level, will be periodically updated by the Area should any of the information change due to more current data being available.
- A3 When employees are excessed out of their installation, the Union at the regional level may request a comparative work hour report of the losing installation 60 days after the excessing of such employees.
- A4 If a review of the report does not substantiate that business conditions warranted the action taken, such employees shall have their retreat rights activated. If the retreat right is denied, the employees have the right to the grievance-arbitration procedure.

B In order to minimize the impact on employees in the regular work force, the Employer agrees to separate to the extent possible, MHAs and casual employees, working in the affected craft and installation prior to excessing any regular employee in that craft out of the installation. The junior full-time employee who is being excessed has the option of reverting to part-time flexible status in his/her craft, if such status is available in the installation, or of being reassigned to the gaining installation.

Section 12.5 sets forth certain principles of reassignments that are applicable to all excessing situations. Section 12.5A states the general rule, which is repeated in Section 12.6B1 below, that reassignments will be implemented so that dislocation and inconvenience to employees shall be kept to a minimum, consistent with the needs of the Postal Service, and that reassignments will be made in accordance with Section 12.5 and Section 12.6.

The provisions of Section 12.5 provide for the following:

- That dislocation and inconvenience to bargaining unit employees be kept to a minimum.
- That reassignments will be made in accordance with Sections 12.5 and 12.6.
- That where a major relocation of employees is planned, the parties must meet at the national level at least 90 days in advance of implementation of the plan.
- That an Area/Regional level meeting must also take place as much as six (6) months in advance, whenever possible, of the anticipated reassignments.

The union is to be advised of the following:

1. The anticipated impact by craft.
  2. The installations with available vacancies for the employees to be reassigned.
  3. Where a new installation is involved, the anticipated complement by tour and craft.
  4. The above information must be updated periodically and provided to the Union at the Area/Regional level.
- That where employees are involuntarily reassigned outside an installation, the union at the regional level may request a comparative work hour report 60 days after the excessing. The report provides a listing of all work hours used on a daily basis in the affected craft for the period of 30 days before and 30 days after the reassignments. If the report does not indicate that conditions warranted the reassignments, the

retreat rights of the affected employees shall be activated. If the retreat rights are denied, the employees have the right to grieve.

- That in order to minimize the impact on employees, MHAs and casual employees working in the craft and installation will be separated to the extent possible prior to making involuntary reassignments.
- That full-time employees subject to involuntary reassignment have the option of reverting to part-time flexible, if such status is available in the installation, or of being reassigned to the gaining installation.

**In a 2014 National Arbitration Award, Arbitrator Nolan concluded that the Postal Service is prohibited from reassigning a clerk craft employee into a full-time carrier craft or mail handler craft position if that clerk employee does not meet the definition of full-time employee specified in the Postal Service's National Agreement with the gaining craft's union. In the specific case underlying this National Award, an employee who was a non-traditional full-time (NTFT) clerk did not work 8 hours per day or 40 hours per week, and therefore his reassignment into the city carrier craft was vacated.**

**Source: National Arbitration Award Q06N-4Q-C 12114440, Arbitrator D. Nolan, dated February 16, 2014.**

## Section 12.6 Reassignments

### A Basic Principles and Reassignments

When it is proposed to:

A1 Discontinue an independent installation;

A2 Consolidate an independent installation (i.e., discontinue the independent identity of an installation by making it part of another and continuing independent installation);

A3 Transfer a classified station or classified branch to the jurisdiction of another installation or make an independent installation;

A4 Reassign within an installation employees excess to the needs of a section of that installation;

A5 Reduce the number of regular work force employees of an installation other than by attrition;

A6 Centralize mail processing and/or delivery installations; or

- A7 Reduce the number of part-time flexibles other than by attrition; such actions shall be subject to the following principles and requirements.

Section 12.6A is no more than a “Table of Contents” for Section 12.6C. When excessing is required, the seven (7) parts of Section 12.6A should be reviewed to determine which part should be applied and then the corresponding part of Section 12.6C should be referred to for the specific procedures involved. For example, the procedures for Section 12.6A1 are found in Section 12.6C1; similar reference should be made for Sections 12.6A2 through A7. More often than not, if involuntary reassignments outside the installation are needed, Section 12.6C5, applies.

#### B Principles and Requirements

- B1 Dislocation and inconvenience to full-time and part-time flexible employees shall be kept to the minimum consistent with the needs of the service.
- B2 The Vice President, Area Operations shall give full consideration to withholding sufficient full-time and part-time flexible positions within the area for full-time and part-time flexible employees who may be involuntarily reassigned. When positions are withheld, the local union may request on a quarterly basis, that local management review the continuing need for withholding such positions and management shall discuss with the union the results of such review. **If and when local management learns that an installation is released, in whole or in part, from withholding, it shall notify the union.**
- B3 Except as otherwise provided by this Agreement, no employee shall be allowed to displace, or "bump" another employee, properly holding a position or duty assignment.
- B4 Under Section 12.6A4, governing reassignments within an installation of the employees excess to the needs of the section, the Union at the local level shall be notified in advance (as much as 30 days whenever possible).
- B5 Full-time and part-time flexible employees involuntarily detailed or reassigned from one installation to another shall be given not less than 60 days advance notice, if possible, and shall receive moving, mileage, per diem and reimbursement for movement of household goods, as appropriate, if legally payable, will be governed by the standardized Government travel regulations as set forth in Methods Handbook F-10, "Travel."

- B6** The Regional Director for the NPMHU will receive at least 30 days notice for excessing outside of the installation that does not involve employee relocation. Such notice shall include a list of potential vacancies for reassignments. The impacted employees will receive the same notice at least 30 days in advance. Where employee relocation benefits are applicable the Regional Director for the NPMHU will receive at least 60 days notice for excessing outside of the installation. Such notice shall include a list of potential vacancies for reassignments. Impacted employees will receive the same notice at least 60 days in advance.
- B7** Any employee volunteering to accept reassignment to another craft or occupational group, another branch of the Postal Service, or another installation shall start a new period of seniority beginning with such assignment, except as provided herein.
- B8** Whenever changes in mail handling patterns are undertaken in a geographic area including one or more postal installations with resultant successive reassignments of Mail Handlers from those installations to one or more central installations, the reassignment of Mail Handlers shall be treated as details for the first 120 days for purposes of bidding only in order to prevent inequities in the seniority lists at the gaining installations. The 120 days is computed from the date of the first detail of a Mail Handler to the central, consolidated or new installation in that specific planning program. If a tie develops in establishing the merged seniority roster at the gaining installation, it shall be broken by total continuous service in the regular work force in the same craft.
- B9** Whenever in this Agreement provision is made for reassignments, it is understood that any full-time or part-time flexible employees reassigned must meet the qualification requirements of the position to which reassigned.
- B10** It is understood that any employee entitled hereunder to a specific placement may exercise entitlement only if no other employee has a superior claim hereunder to the same position.
- B10a** Surplus U.S. Postal Service employees from non-mail processing and non mail delivery installations, area offices, the U.S. Postal Service Headquarters or from other Federal departments or agencies shall be placed at the foot of the part-time flexible roll and begin a new period of seniority effective the date of reassignment.

B10b Former full-time post office Mail Handlers who were reassigned to mail bag repair centers and depositories on or before July 1, 1956, and who since such reassignment have been continuously employed in the same center or depository and subsequent to March 31, 1965:

B10b1 When such an employee is declared excess and is returned to the Mail Handler craft in the same installation from which the employee was reassigned, seniority shall be the same as for continuous service in the craft and installation.

B10b2 Should such an employee who is not excess volunteer to be returned to the installation in place of a junior excess employee, seniority in the Mail Handler craft and installation will be that of the junior excess employee.

B10b3 If such an employee voluntarily transfers to the employee's former installation he/she shall begin a new period of seniority.

Section 12.6B provides the principles and requirements for making involuntary reassignments. Note that, while the contract language discussed below references full-time regular and part-time flexible employees, the provisions also apply to part-time regulars. They are as follows:

- Dislocation and inconvenience to full-time regular and part-time flexible employees shall be kept to a minimum consistent with the needs of the Postal Service.
- The Vice-President, Area Operations should give full consideration to withholding sufficient vacancies to accommodate affected employees who may be subject to involuntary reassignment within the Area. Periodic reviews should be made by local management to determine if there is a continuing need to withhold vacancies and the results of the review should be discussed with the local union.

In a National Award, Arbitrator Gamser held as follows:

There is no question that Appendix A of the 1975 National Agreement imposed upon Management an obligation to anticipate dislocations which might occur and to withhold full-time vacancies for the purpose of preserving as many opportunities for regular full-time employees to avoid the dislocation of moving out of the area by bidding into such full-time positions when they were forced out of their regular positions. Such a

requirement was agreed to by the parties to several previous national negotiations, regardless of the craft or crafts represented on the union side of the bargaining table, because both labor and management recognized that full-time employees, in this instance, were members of a career work force, with tenure and stability of employment to be protected wherever possible, with rights which superseded those with a less protected career status regardless of craft. That is obviously why the provisions of the earlier Article XII and those of Appendix A, pertinent to this proceeding, as well as those of the present Article XII, did not impose a restriction upon the Area Postmaster General to withhold vacant full time positions only for the benefit and protection of employees who are members of the same craft as that in which the vacancy exists.

Source: National Arbitration Award NC-E-16340, Arbitrator H. Gamser, dated December 7, 1979.

**Length of withholding:** There is no established contractual time limit on the length of time management may withhold residual positions. Rather, as Arbitrator Gamser noted in Case 16340 above, the parties must apply “a rule of reason based upon the facts and circumstances then existing.” Whether management’s actions are reasonable in a particular case depends on the full facts and circumstances in that case.

**When positions are withheld, the local union may request, on a quarterly basis, that local management review the continuing need for withholding such positions and management shall discuss with the union the results of such review. In addition, when local management learns that an installation is released from withholding – in whole or in part – local management shall notify the Union.**

**Number of withheld positions:** Management may not withhold more positions than are reasonably necessary to accommodate any planned excessing. Section 12.6B2 only authorizes management to withhold “sufficient full-time and part-time flexible positions within the area for full-time and part-time flexible employees who may be involuntarily reassigned.”

There are no blanket rules that can be used to determine whether management is withholding an excessive number of positions, or withholding positions for an excessive period of time. Again, each case must be examined based on the local facts and circumstances in that case. Generally, this involves calculating the number of positions that will be reduced and the length of time over which the reductions will occur and then determining whether the reductions will occur faster than can be accommodated by normal attrition.

Withholding positions for excessing is only justified when positions in the losing craft or installation must be reduced faster than can be accomplished through normal attrition. Projections of anticipated attrition must take into account local historical attrition data and the age composition of the employees. Installations with a high percentage of employees approaching retirement age can reasonably expect higher attrition than installations with a high percentage of younger employees. Thus, accurate projections require an examination of the local fact circumstances rather than mere application of a national average attrition rate.

- Section 12.6B3 provides that no employee may displace or bump another employee properly holding a position or duty assignment. The reassignment provisions contained in Section 12.6C do not violate Section 12.6B3 even though junior full-time employees are involuntarily reassigned, and their duty assignments are reposted to the remaining senior full-time employees for placement through the bid or expedited selection procedures.

Provides that the Union at the Regional/ Area level will receive at least 30 days' notice for excessing outside the installation where employee relocation benefits are not applicable and will receive at least 60 days' notice for excessing outside the installation where employee relocation benefits are applicable. **Both such notices shall include a list of potential vacancies for reassignment. Impacted mail handlers, and senior in lieu of volunteers, may be placed as unassigned regular mail handlers in the gaining installation. See Article 12.6C5b6 and the MOU Re Excessing Issues for exceptions concerning Level 5 veteran preference employees.**

- National Arbitrator Garrett has ruled that such notice is meaningless “unless given prior to the event. One obvious purpose of giving notice is to provide opportunity for an involved Union to investigate the facts and make suggestions calculated to minimize ‘dislocation and inconvenience to full-time or part-time flexible employees affected’ . . . proper notice is not given . . . unless it provides an affected Union with a reasonable time period to investigate relevant facts and to discuss the matter with appropriate Management representatives before the proposed action becomes effective.” Arbitrator Garrett also noted that while the Union, after notification, would have “reasonable opportunity to present facts and suggestions to the Service, there can be no obligation by the Service to engage in ‘collective bargaining’” regarding the reassignments.

Source: National Arbitration Award AC-NAT-3052, Arbitrator S. Garrett, dated April 25, 1977.

- Affected employees are entitled to an advance notice of not less than 60 days, if possible, before making involuntary details or reassignments from one installation to another **that involves employee relocation**. When involuntary

reassignments are made, the affected employees are entitled to receive moving, mileage, per diem, and reimbursement for movement of household goods as appropriate if legally payable pursuant to the applicable handbook. Currently, the regulations are found in Handbook F-15-C, Relocation Policy—Bargaining Employees.

In a case involving the failure of management to provide the 60-days advance notice to mail handlers exceeded to the Des Moines BMC, Arbitrator Fasser ruled that “[t]he notices required . . . are substantive conditions. . . It is imperative that the notice requirements that are so carefully worked out at the bargaining table command the respect due them. . . The traumatic impact of the involuntary reassignment on the individual and his family embraces countless variations and ramifications. The purpose of the notice is to minimize to the extent possible, that traumatic impact.”

Source: National Arbitration Award MC-C-325, Arbitrator P. Fasser, dated December 8, 1976.

To qualify for relocation allowances, the distance between an employee’s new duty station and his/her old residence must be at least 50 miles greater than the distance between the employee’s old duty station and the old residence.

Source: Handbook F-15-C, Relocation Policy—Bargaining Employees.

In a 1979 National Award, Arbitrator Gamser concluded that employees who have been involuntarily reassigned are not entitled to additional relocation expenses when they voluntarily exercise retreat rights to return to their original facility.

Source: National Arbitration Award MC-N-1386, Arbitrator H. Gamser, dated August 25, 1979.

- Provides that an employee who volunteers for reassignment will begin a new period of seniority, except as provided for in Section 12.6.
- Provides that when involuntary reassignments are made due to centralized mail processing, the reassignments are treated as details for the first 120 days. The 120 days is computed from the date of the first detail of a mail handler to the central, consolidated, or new installation. This provision is effected only when Section 12.6C6 is applied.

Arbitrator Gamser ruled that employees who have been involuntarily reassigned due to centralized mail processing are treated as on detail pursuant to Sections 12.6B7 and 12.6C6c, and thus they have no seniority rights for the entire detail period for bidding or for subsequent reassignments from the gaining installation.

Source: National Arbitration Award A-NAT-2341, Arbitration H. Gamser, dated August 6, 1973.

- Provides that employees being reassigned must meet the qualification requirements of the position to which they are being reassigned.
- Provides that an employee entitled to specific placement pursuant to this Article may exercise such placement provided no other employee has a superior claim to the same duty assignment, such as seniority or incumbency, and is in fact entitled to exercise his or her claim for that position.
- Provides that surplus/excess employees from Headquarters, Area Offices, non-mail processing and non-mail delivery installations or from other Federal departments or agencies shall be placed at the foot of the part-time flexible roll and begin a new period of seniority except as provided in Section 12.6B10b.
- Light/Limited Duty Employees: When excessing occurs in a craft, either within the installation or to another installation, the sole criteria for selecting the employees to be excessed is seniority. Whether or not a member of the affected craft is recovering from either an on- or off-the-job injury would have no bearing on his/her being excessed.

In the case of other craft employees who are temporarily assigned to the craft undergoing the excessing, they would have to be returned to their respective crafts, in accordance with the provisions of Article 13 (Section 13.4C):

The reassignment of a full-time regular or part-time flexible employee to a temporary or permanent light duty or other assignment shall not be made to the detriment of any full-time regular on a scheduled assignment or give a reassigned part-time flexible preference over other part-time flexible employees.

Source: Letter from P. Sgro, dated July 14, 2000.

- Occupational Group: The term “occupational group” does not apply to the Mail Handler craft, so Mail Handlers are reassigned on the basis of juniority only.

## C Special Provisions on Reassignments

In addition to the general principles and requirements above specified, the following specific provisions are applicable:

### C1 Discontinuance of an Independent Installation

- C1a When an independent installation is discontinued, all full-time and part-time flexible employees shall, to the maximum extent possible, be involuntarily reassigned to continuing postal positions in accordance with the following:
- C1b Involuntary reassignment of full-time employees with their seniority for duty assignments to vacancies in the same, higher or lower level in the same craft or occupational group in installations within 50 miles of the discontinued installation, or if necessary within 100 miles of the discontinued installation, or in more distant installations, if after consultation with the Union, it is determined that it is necessary. The Postal Service will designate such installations for the reassignment of excess full-time employees. When two or more such vacancies are simultaneously available, first choice of duty assignment shall go to the senior employee entitled by displacement from a discontinued installation to such placement.
- C1c Involuntary reassignment of full-time employees for whom consultation did not provide for placement under 12.6C1b above, in other crafts or occupational groups in which they meet minimum qualifications at the same or lower level.
- C1d Involuntary reassignment of part-time flexible employees with seniority in any part-time flexible vacancy in the same craft or occupational group at any installation within 50 miles of the discontinued installation, or if necessary within 100 miles of the discontinued installation, or in more distant installations, if after consultation with the Union it is determined that it is necessary, the Postal Service will designate such installations for the reassignment of the part-time flexible employees.
- C1e Involuntary reassignment of part-time flexible employees for whom consultation did not provide for placement under 12.6C1d, above in other crafts or occupational groups in which they meet minimum qualification at the same or lower level at the foot of existing part-time flexible roster at the receiving installation and begin a new period of seniority.
- C1f Full-time employees for whom no full-time vacancies are available by the time the installation is discontinued shall be changed to part-time flexible employees in the same craft and placed as such, if such status is available in the

installation, but shall for six months retain placement rights to full-time vacancies developing within that time within any installation within 50 miles of the discontinued installation, **or if necessary within 100 miles of the discontinued installation**, or in more distant installations, if after consultation with the Union it is necessary, U.S. Postal Service will designate such installations for the reassignment of excess full-time employees on the same basis as if they had remained full-time.

- C1g Employees, full-time or part-time flexible, involuntarily reassigned as above provided shall upon the reestablishment of the discontinued installation be entitled to reassignment with full seniority to the first vacancy in the reestablished installation in the level, craft or occupational group from which reassigned.

Section 12.6C1 concerns reassignments resulting from the discontinuance of an installation. When an independent installation is discontinued, all full-time and part-time flexible employees are involuntarily reassigned to the postal positions in continuing installations to the maximum extent possible and in accordance with this section.

Involuntary reassignments of full-time employees, with their seniority, are made to vacancies in the same, **higher** or lower level in the same craft in installations, designated by the Postal Service, within **50 miles of the discontinued installation, or if necessary within 100 miles of the discontinued installation.**

Reassignments to more distant installations are made only if necessary and only after consultation with the Union. If two or more vacancies are available at the same time in the gaining installation, first choice is given to the senior displaced employee.

The one hundred mile criterion is measured as the shortest actual driving distance between installations.

Source: Step 4 Grievance H7C-4K-C 28684, dated July 23, 1993.

If insufficient Mail Handler assignments are available, reassignments are made to positions in other crafts in the same or lower level for which the minimum qualifications are met. In these circumstances, seniority will be governed by the terms of the gaining craft's seniority provisions.

## MEMORANDUM OF UNDERSTANDING

### “SAME OR LOWER” LEVEL

For purposes of implementing “same or lower” level or “same or lower” salary level under the National Agreement, in Articles 6, 12, and 13, the parties agree that MH Level 4 is the same level as PS Level 5 and that MH Level 5 is the same level as PS Level 6. Exhibit 418.1, Equivalent Grades, of the ELM and other ELM provisions, as necessary, will be amended accordingly.

Involuntary reassignments of part-time flexible employees, with their seniority, are made to part-time flexible vacancies in the same or lower level and in the same craft in installations, designated by the Postal Service, within **50 miles of the discontinued installation or if necessary within 100 miles of the discontinued installation.** Again, reassignments to more distant installations are made only if necessary and only after consultation with the Union. If insufficient part-time flexible assignments are available in the Mail Handler craft, reassignments are made to positions in other crafts in the same or lower level for which the minimum qualifications are met. The part-time flexible employees reassigned to other crafts are placed at the foot of the existing part-time flexible roster in that craft and begin new periods of seniority.

Section 12.C1f provides that full-time employees for whom no full-time vacancies are available by the time that the installation is discontinued shall be changed to part-time flexible in the craft and reassigned as part-time flexibles, **if such status is available in the installation.** Such former full-time employees would retain placement rights for six months to full-time vacancies developing within that time in any installation within **50 miles of the discontinued installation, or if necessary within 100 miles of the discontinued installation.** Reassignments to more distant installations, designated by the Postal Service, would require consultation with the Union. Please note, however, that this Section pre-dates and may be inconsistent with the no-layoff provisions of Article 6 and with statutory protections provided for certain Veterans Preference eligible employees.

Reassigned employees, both full-time and part-time flexible, are entitled to retreat rights if the discontinued installation is reestablished. Retreat rights are to vacancies in the same craft from which the employee was reassigned and are administered by seniority. Retreat rights are terminated if the excessed employee is informed of an appropriate available vacancy but nonetheless fails to accept that vacancy

## C2 Consolidation of an Independent Installation

C2a When an independent postal installation is consolidated with another postal installation, each full-time or part-time flexible employee shall be involuntarily reassigned to the continuing installation without loss of seniority in the employee's craft or occupational group.

- C2b Where reassignments under 12.6C2a preceding, result in an excess of employees in the continuing installation, identification and placement of excess employees shall be accomplished by the continuing installation in accordance with the provisions of this Agreement covering such situations.
- C2c If the consolidated installation again becomes an independent installation, each full-time and part-time flexible employee whose reassignment was necessitated by the previous consolidation shall be entitled to the first vacancy in the reestablished installation in the level and craft or occupational group held at the time the installation was discontinued.

Section 12.6C2 applies to those situations in which Management determines to discontinue the independent identity of an installation by making it part of another and continuing independent installation.

In such circumstances, each full-time and part-time flexible employee shall be involuntarily reassigned to the continuing installation without loss of seniority in the employee's craft. Where this action results in an excess of employees in the continuing installations, reassignment of excess employees from the continuing installation will be governed by the applicable provisions of Section 12.6. Reassigned employees, both full-time and part-time flexible, are entitled to retreat rights if the consolidated installation again becomes an independent installation. Retreat rights are to vacancies in the same craft from which the employee was reassigned and are administered by seniority. Retreat rights are terminated if the excessed employee is informed of an appropriate available vacancy but nonetheless fails to accept that vacancy

Note that Article 30 (Section 30.3C) provides for a new period of local implementation concerning the Local Memorandum of Understanding when installations are consolidated.

**C3 Transfer of a Classified Station, Classified Branch or other Facility to the Jurisdiction of Another Installation or Made an Independent Installation**

- C3a When a classified station, classified branch or other facility is transferred to the jurisdiction of another installation or made an independent installation, all full-time employees shall at their option remain with the classified station, classified branch or other facility without loss of seniority, or remain with the installation from which the classified station, classified branch or other facility is being transferred.

- C3b A realistic appraisal shall be made of the number of employees by crafts or occupations who will be needed in the station, branch or other facility after transfer, and potential vacancies within these requirements created by the unwillingness of employees to follow the station, branch or other facility to the new jurisdiction shall be posted for bid on an office-wide basis in the losing installation.
- C3c If the postings provided in paragraph 12.6C3b preceding, do not result in sufficient employees to staff the transferred classified station, classified branch or other facility, junior employees, by craft or occupational group on an installation-wide seniority basis in the losing installation, shall be involuntarily reassigned to the classified station, classified branch or other facility and each employee thus involuntarily reassigned shall be entitled to the first vacancy in such employee's level and craft or occupational group in the installation from which transferred.

Section 12.6C3 applies when a facility is transferred from the jurisdiction of one installation to the jurisdiction of another installation or when the facility itself becomes an independent installation.

Full-time employees, who have bid assignments at the subject station or branch or other facility, may opt to retain their bid assignment and seniority in the gaining installation without loss of seniority or to remain in the losing installation as an unassigned regular. Once management has determined a realistic number of assignments needed at the facility after the transfer, any vacancies resulting from employees unwilling to move are to be posted for bid, office-wide, at the gaining installation. Should the posting not result in sufficient employees to staff the gaining installation, management may involuntarily reassign employees from the losing installation based on juniority by craft on an installation-wide basis.

Involuntarily reassigned employees are entitled to retreat rights to the first residual vacancy in the same craft in the installation from which reassigned. Retreat rights are administered by seniority. Retreat rights are terminated if the excessed employee is informed of an appropriate available vacancy but nonetheless fails to accept that vacancy

- C4 Reassignment Within an Installation of Employees Excess to the Needs of a Section
  - C4a The identification of assignments comprising for this purpose a section shall be determined locally by local negotiations. If

no sections are established by local negotiations, the entire installation shall comprise the section.

The sections identified pursuant to Article 30, Section .2P in the local memorandum of understanding are used in implementing this provision. If sections are not identified in the local memorandum of understanding, the entire installation is considered the section and Section 12.6C4 has no application. If the entire installation is the section, mail handlers are moved within the installation not by the procedures of this section, but by the mechanisms of abolishment and subsequent posting and bidding or assignment under other provisions of Article 12.

C4b Full-time employees, excess to the needs of a section, starting with that employee who is junior in the same craft or occupational group and in the same level assigned in that section, shall be reassigned outside the section but within the same craft or occupational group. They shall retain their seniority and may bid on any existing vacancies for which they are eligible to bid.

If they do not bid, they may be assigned any vacant duty assignment for which there was no senior bidder in the same craft and installation. Their preference is to be considered if more than one such assignment is available.

Before involuntarily reassigning full-time regular employees from a section, you should accomplish the following:

- identify the full-time duty assignments to be abolished; and
- identify the junior full-time employees to be reassigned; and
- identify the number of duty assignments in the section that are encumbered by the junior full-time employees but will remain following the reassignment of those junior employees. These duty assignments are to be posted for sectional bidding.

When making involuntary reassignments from a section, you start with the junior full-time regular employee in the same craft and in the same salary level regardless of whether or not the junior full-time employee's duty assignment was abolished. The affected junior full-time employee(s) are reassigned with their seniority outside the section as unassigned full-time regular employees in the same craft and in the same salary level. The duty assignments, if any, vacated by the reassigned junior employees are to be posted for sectional bidding.

Remember the following:

- While designated as a steward or chief steward, an employee cannot be involuntarily reassigned to another tour, station, or branch of the installation, if there is a duty assignment in their category (full or part-time) for which they are qualified to work, as provided in Article 17 (Section 17.3C).
- Occupational group does not apply to the Mail Handler craft.
- When reassigning the junior full-time employees outside the section as unassigned full-time employees, they are entitled to schedules with fixed non-scheduled days off.

This provision also provides that, as an unassigned full-time employee, the reassigned junior employees may bid on vacancies for which they are otherwise eligible to bid. Should they not be successful in bidding, they may be assigned to residual vacancies pursuant to Section 12.3B11.

C4c Such reassigned full-time employee retains the right to retreat to the section from which withdrawn only upon the occurrence of the first residual vacancy in the salary level after employees in the section have completed bidding. Such bidding in the section is limited to employees in the same salary level as the vacancy. Failure to bid for the first available vacancy will end such retreat right. The right to retreat to the section is optional with the employee who has retreat rights with respect to a vacancy in a lower salary level. Failure to exercise the option does not terminate the retreat rights in the salary level in which the employee was reassigned away from the section.

This provision provides for retreat rights as well as sectional bidding. Sectional bidding is limited to employees in the same salary level as the vacancy. The residual vacancies are available for retreat rights. Those full-time employees who were involuntarily reassigned from the section must exercise retreat rights to the first available vacancy in the salary level or lose such rights. The right to retreat to a vacancy in a lower salary level is optional and failure to exercise this option does not terminate the employees' right to retreat to a vacancy in the same salary level.

**The parties agree that when it is necessary that fixed scheduled day(s) of work in the basic work week for a craft assignment be permanently changed, including during periods of excessing to the needs of a section, the affected assignment(s) shall be reposted for all employees eligible to bid within the installation.**

**Source: Step 4 Grievance B00M-1B-C 03153176, dated January 7, 2010.**

- C4d When full-time duty assignment(s) in the same craft or occupational group and the same level in the section are to be abolished and the junior employee(s) from the Section are to be reassigned, the following shall apply:
  - C4d1 The appropriate duty assignment(s) shall be identified and abolished.
  - C4d2 The junior full-time employee(s) excess to the needs of the section shall be identified and reassigned.
  - C4d3 The duty assignment(s) encumbered by the employee(s) junior to the senior employee whose duty assignment is abolished will be offered, in seniority order, and in an expedited selection process, to the employee(s) remaining in the section beginning with the senior employee whose duty assignment was abolished. An employee(s) declining to make a selection when canvassed shall be assigned to the duty assignment(s) remaining in the section after the expedited selection process has been completed.
  - C4d4 The results of the above-listed actions shall be effective at the beginning of the succeeding pay period.

The provisions of Section 12.6C4d were first added to the National Agreement in 1993. Their purpose is to protect the schedule of a senior employee whose job may be abolished, while also expediting the selection process. If there is a need to abolish a full-time duty assignment in a section which would result in the excessing of the junior employee, there will be expedited bidding by the employees within the section, limited to the senior employee whose assignment was abolished and all employees junior to that employee. Those employees will select from among the duty assignments remaining in the section that are encumbered by employees junior to that senior employee whose duty assignment was abolished.

#### C5 Reduction in the Number of Employees in an Installation Other Than by Attrition

The title of this provision (“C5 Reduction in the Number of Employees in an Installation Other Than by Attrition”) is somewhat misleading, since reassignments within the installation across craft lines is the required first step. The true application is not for a reduction of the overall number of employees in an installation, but for a reduction in the number of employees in a craft or

occupational group in the same salary level in an installation other than by attrition.

C5a Reassignments within installation. When for any reason an installation must reduce the number of employees more rapidly than is possible by normal attrition, that installation:

This provision provides for the reassignment of excess employees from one craft to another to effect a reduction in employee complement more quickly than can be accomplished by employee attrition.

C5a1 Shall determine by craft and occupational group the number of excess employees;

This provision provides for the enumeration of excess employees by craft and occupational group. While not stated, this effort must reflect the salary level, since identification of employees to be excessed is based on salary level as well as craft and occupational group. Again the term occupational group does not apply to the mail handler craft.

C5a2 Shall, to the extent possible, minimize the impact on regular work force employees by separation of all casuals and all MHAs;

This provision requires management to minimize the impact on regular work force employees by separating casuals **and MHAs** to the extent possible. This provision does not require the automatic separation of all casuals **and all MHAs** prior to reassigning an excess employee across craft lines. It does require management to minimize the impact as much as possible, but there may be occasions where management will not be able to do so. Remember that Section 12.5B provides in part the following:

In order to minimize the impact on employees in the regular workforce the employer agrees to separate, to the extent possible, **MHAs and** casual employees working in the affected craft and installation prior to excessing any regular employee in that craft out of the installation.

Incorporating an agreement reached by the parties in a recent National Arbitration, Arbitrator Snow held that the language in Section 12.6C5a2 means that “[a]ll casuals must be removed if it will minimize the impact on regular workforce employees. The Employer must eliminate all casuals to the extent that it will minimize the impact on the regular workforce.”

Source: National Arbitration Award H0C-NA-C 12, Arbitrator C. Snow, dated July 27, 2001.

**The provision for “separation of all casuals” applies to casuals in the affected or losing craft, and not to casuals in other crafts.**

**Source: National Arbitration Award Q94N-4Q-C 99052344, Arbitrator S Das, dated November 11, 2009.**

C5a3 Shall, to the extent possible, minimize the impact on full-time positions by reducing part-time flexible hours;

This provision requires management, to the extent possible, to minimize the impact on full-time duty assignments by reducing part-time flexible hours prior to excessing full-time regular employees.

C5a4 Shall identify as excess the necessary number of junior full-time employees in the **craft** and occupational group affected on an installation-wide basis within the installation; make reassignments of excess full-time employees who meet the minimum qualifications for vacant assignments in other crafts in the same installation; involuntarily reassign them in the same or lower level. **Before resorting to reassignment to other installations pursuant to C5b, any senior employee(s) identified as excess who meet(s) the minimum qualifications for vacant assignments in other crafts and who volunteer(s) to remain in the installation in other crafts shall be assigned in lieu of junior employees who are identified as excess.**

C5a5 The employee shall be returned at the first opportunity to the craft from which reassigned.

Section 12.6C5a5 mandates that an employee reassigned across craft lines under Section 12.6C5a must be returned to the craft from which reassigned at the first available opportunity. This is an absolute; not retreat rights. While the language does not provide an order for returning employees when more than one was reassigned across craft lines, the parties at the national level agree that the employees are returned based on seniority. For example, if three (3) full-time employees were reassigned across craft lines within the installation, the three employees do not have retreat rights but must return to the craft based on their seniority. When employees are excessed across craft lines and at the same time employees are involuntarily excessed outside the installation, the employees who were reassigned across craft lines must return first regardless of seniority. The controlling language is that, “...they must return at the first opportunity.”

**Changes made in the 2016 National Agreement give senior employees identified as excess to the needs of an installation the right to choose to remain in the installation in other crafts, while junior employees are excessed out of the installation. The prior provision allowed management to force senior employees to relocate while junior employees stayed in the installation.**

**The issue in this case is whether the National Postal Mail Handlers Union (NPMHU) has the right to file a grievance to enforce returning an excessed clerk into a residual vacancy in the clerk craft.**

**After full discussion of this issue, the parties agree the NPMHU has the right to file a grievance to enforce the terms of Article 12.6.C5a5 of the NPMHU national agreement.**

**Source: Step 4 Grievance C11M-1C-C 13103916, dated October 6, 2015.**

C5a6 When returned, the employee retains seniority previously attained in the craft augmented by intervening employment in the other craft.

When an employee is returned to his/her original craft as required by Section 12.6C5a5 above, seniority is reestablished as if the employee had served continuously in the original craft and had never been excessed.

C5a7 **Except as provided for in paragraph C5a4 above,** the right of election by a senior employee provided in paragraph 12.6C5b3, below is not available for this cross craft reassignment within the installation.

Under the provisions of Section 12.6C5b6 below, a senior employee may voluntarily elect to be reassigned to another installation in lieu of a more junior employee from the same craft subject to reassignment. This section makes clear that this right does not apply to reassignments across craft lines within an installation.

C5b Reassignments to Other Installations After Making Reassignments Within the Installation:

C5b1 Involuntarily reassign such excess full-time employees starting with the junior with their seniority for duty assignments into mail handler vacancies in the gaining installation at the same, higher or lower level for which they are qualified within 50 miles of the losing installation. Mail handlers will be excessed from the losing installation by inverse seniority in their

craft by status (full-time regular, part-time regular, part-time flexible), without concern to level.

Section 12.6C5b1 provides for the involuntary reassignment of full-time employees by juniority to other installations to vacancies within **50** miles in the same, **higher** or lower level in the Mail Handler craft. Management designates the available vacancies in the craft. Pursuant to Section 12.2G6, mail handlers excessed under this provision retain their seniority.

C5b2 Involuntarily reassign full-time employees for whom vacancies were not identified in C5b1 above in other crafts or occupational groups in which they meet minimum qualifications at the same or lower level within 50 miles of the losing installation.

If management cannot identify a sufficient number of Mail Handler vacancies within **50** miles of the losing installation, excess full-time employees are reassigned to available vacancies in other crafts for which they meet the minimum qualification within the same or lower level within the **50** miles.

C5b3 If sufficient vacancies cannot be identified within the 50 mile area, involuntarily reassign excess employees into mail handler vacancies in the gaining installation at the same, higher or lower level for which they are qualified within 100 miles . Mail handlers will be excessed from the losing installation by inverse seniority in their craft by status (full-time regular, part-time regular, part-time flexible), without concern to level.

C5b4 If vacancies cannot be identified within the employees' own craft and occupational group, then vacancies will be identified in other crafts within the 100 mile area. Involuntarily reassign excess employees for whom vacancies were not identified in C5b3 above in other crafts or occupational groups in which they meet minimum qualifications at the same or lower level.

If all the affected employees cannot be reassigned within **50** miles of the losing installation, involuntarily reassign them, with their seniority, to Mail Handler vacancies within 100 miles. If sufficient vacancies are still not available for placement of affected employees, reassign to vacancies to other crafts for which the affected employees meet the minimum qualifications in the same or lower level within 100 miles.

The one hundred mile criterion is measured as the shortest actual driving distance between installations.

Source: Step 4 Grievance H7C-4K-C 28684, dated July 23, 1993.

C5b5 If vacancies cannot be identified within the 100 mile area, and after consultation with the affected union it is determined that it is necessary, the Postal Service will designate more distant installations for the reassignment of excess full-time employees.

If sufficient number of vacancies cannot be identified within 100 miles in all crafts, after consultation with the Union the Postal Service will identify vacancies in more distant installations, if available.

C5b6 If a veteran preference eligible is reached when assigning impacted or unassigned employees to lower level assignments, the following will apply:

- a. The most junior non-preference eligible same level mail handler in the gaining installation shall be reassigned to the lower level vacancy.
- b. The impacted preference eligible mail handler will then be assigned to the duty assignment previously occupied by that junior non-preference eligible mail handler.
- c. Any employee reassigned to a lower level duty assignment shall receive saved grade and shall not be required to bid to their former level for two years to retain the saved grade.
- d. The non-preference eligible mail handler moved to the lower level duty assignment shall have retreat rights back to the former duty assignment the first time it becomes vacant.
- e. A veteran preference eligible mail handler for personal convenience may waive the right to appeal through the grievance process, to the Equal Employment Opportunity Commission, and/or to the Merit Systems Protection Board and select a duty assignment at a lower level with saved grade with the same saved grade in C5b6c above.

- f. If no level 5 vacancies exist, or if all level 5 occupied positions at the gaining installation are occupied by veteran preference eligible mail handlers, the withholding radius will be expanded to allow for placement unless the veteran eligible applies C5b6e above.

C5b7 The Regional Director for the NPMHU will receive at least 30 days notice for excessing outside of the installation that does not involve employee relocation. Such notice shall include a list of potential vacancies for reassignments. The impacted employees will receive the same notice at least 30 days in advance. Where employee relocation benefits are applicable the Regional Director for the NPMHU will receive at least 60 days notice for excessing outside of the installation. Such notice shall include a list of potential vacancies for reassignments. Impacted employees will receive the same notice at least 60 days in advance.

C5b8 Impacted mail handlers, and senior in lieu of volunteers, may be placed as unassigned regular mail handlers in the gaining installation provided that sufficient vacancies will be available for placement of all such unassigned regular mail handlers (regardless of level) within 6 months of the date that the employee was placed. These mail handlers must bid on all available vacancies in the gaining installation or be immediately placed into the first available residual vacancy by management in accordance with the provisions of Article 12 of the National Agreement, provided that Level 5 veteran preference mail handlers who were involuntarily excessed will only be placed into Level 5 residual vacancies or in accordance with paragraph C5b6 above.

C5b9 Any senior employee in the same occupational group in the same installation may elect to be reassigned to the gaining installation and take the seniority of the senior full-time employee subject to involuntary reassignment. Such senior employees who accept reassignment to the gaining installation do not have retreat rights.

Under this provision, a senior employee may voluntarily elect to be reassigned to another installation in lieu of a more junior employee from the same craft subject to reassignment. This option applies when employees are excessed to positions in other installations, but not when employees are excessed to another craft within the same installation under Section 12.6C5a above. This option is available to senior employees up to the number of employees who are designated as subject to involuntary reassignment; the senior employees take the seniority of the specific junior employee that they will replace.

C5b10 When two or more such vacancies are simultaneously available, first choice of duty assignment shall go to the senior employee entitled by displacement from a discontinued installation to such placement.

C5b11 A full-time employee shall have the option of changing to part-time flexible in the same craft or occupational group in lieu of involuntary reassignment, if part-time flexible status exists in the losing installation.

Section 12.6C5b8 provides full-time employees subject to involuntary reassignment the option of changing to part-time flexible in lieu of involuntary reassignment, **if part-time flexible status exists in the losing installation.** This is the employee's option; not management's.

When an employee elects to change to part-time flexible in the Mail Handler craft in lieu of involuntary reassignment, the employee is placed on the part-time flexible roll in accordance with the employee's seniority. However, all full-time employees who are involuntarily reassigned either across craft lines or to other installations would be given the opportunity to return to the craft prior to the conversion of a part-time flexible regardless of the seniority date of the employee changing to part-time. Such employee has no retreat rights to full-time. The employee would have to wait until all full-time employees who were involuntarily reassigned had been given the opportunity to return to the craft before being converted to full-time. Also, should a sufficient number of full-time employees elect to change to part-time in lieu of involuntary reassignment, **if part-time status exists in the losing installation**, resulting in overstaffing of the part-time flexible category, then management should accomplish the following in accordance with Section 12.6C7:

Identify part-time flexible vacancies to accommodate part-time flexibles as follows:

1. vacancies in other crafts within the installation; then
2. vacancies in the Mail Handler craft in other installations; then

3. vacancies in other crafts in other installations.

C5b12 Employees involuntarily reassigned under 12.6C5b1 through 12.6C5b5 above, other than senior employees who elect to be reassigned in place of junior employees, shall be entitled to be returned to the first vacancy in any level, in the craft or occupational group in the installation from which reassigned, and such entitlement shall be honored until the employee withdraws or declines to accept an opportunity to return.

Section 12.6C5b9 provides retreat rights to full-time Mail Handlers who were involuntarily reassigned. Such retreat rights are automatically provided, and no longer require the employee to file a written request to be returned. The retreat rights will be honored until either the employee is returned, or the **employee withdraws or declines an opportunity to return**. Employees who volunteered to be reassigned in lieu of junior employees subject to involuntarily reassignment are not entitled to retreat rights.

An employee retains his/her retreat rights even if the employee, after the involuntary reassignment but before the exercise of retreat rights, voluntarily transfers to another installation.

Source: Step 4 Grievance NC-N-5462, dated July 15, 1977.

**Question: Do career mail handlers have to submit a written request for retreat rights?**

**Answer: No, retreat rights no longer require a written request by the employee.**

Remember:

The seniority of employees involuntarily reassigned is as follows:

- Other crafts within the installation – begin a new period of seniority.
- Mail Handler craft outside installation – reassigned with seniority, except as provided for in Section 12.6C5b6.
- Other crafts outside the installation – begin a new period of seniority.

C6 Centralized Mail Processing and/or Delivery Installation

- C6a When the operations at a centralized installation or other mail processing and/or delivery installation result in an excess of full-time Mail Handlers at another installation(s), full-time Mail Handlers who are excess in a losing installation(s) by reason of the change, shall have a choice to be:
- C6a(1) Involuntarily reassigned in other crafts or occupational groups in which they meet minimum qualifications at the same or lower level if no vacancies are available in the same craft or occupational group within 50 miles of the losing installation; or,
  - C6a(2) Involuntarily reassigned starting with the junior with their seniority for duty assignments to vacancies in the same, higher 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, the Postal Service will designate such installations for the reassignment of excess full-time employees.
  - C6a(3) Reassignments of Mail Handlers **and employees from other crafts involuntarily reassigned into the Mail Handler craft** shall be treated as details for the first 120 days, for bidding purposes only, to avoid inequities in the selection of preferred duty assignments by full-time Mail Handlers in the gaining installation.

This provision provides for the reassignment of excess full-time mail handlers when the centralization of operations results in the need to make involuntary reassignments at another installation. Section 12.6C5 generally is used when reassignments from the mail handler craft are necessary. However, when involuntary reassignments are made, under this Section, due to Centralizing Mail Processing and/or Delivery Installation, somewhat different rules apply. The options available to mail handlers for reassignment are outlined in the contract language. In addition, full-time mail handlers **and employees from other crafts involuntarily reassigned into the Mail Handler craft** are not eligible to bid for 120 days; their reassignment is treated as a detail for that period of time to avoid inequities at the gaining installation.

The one hundred mile criterion is measured as the shortest actual driving distance between installations.

Source: Step 4 Grievance H7C-4K-C 28684, dated July 23, 1993.

Reassignments of mail handlers under this section shall be treated as details for the first 120 days to avoid inequities in the selection of bid assignments in the gaining installation. As noted hereunder, full-time mail handlers involuntarily reassigned are not eligible to bid for 120 days.

C6b Previously established preferred duty assignments which become vacant before expiration of the detail period must be posted for bid and awarded to eligible full-time Mail Handlers then permanently assigned in the gaining installation. Excess part-time flexible Mail Handlers may be reassigned as provided for in Section 12.6C7.

During the 120 day detail period, all full-time duty assignments which were established prior to the centralization are posted for bid as they become vacant to the full-time employees who were assigned to the installation prior to the involuntary reassignment of the first full-time employee. The clock on the 120 day detail begins to run with the involuntary reassignment of the first full-time employee.

C6c All new duty assignments created in the gaining installation and all other vacant duty assignments in the centralized installation shall be posted for bid. One hundred twenty (120) days is computed from the date of the first detail of an employee. Bidding shall be open to all full-time mail handlers of the craft involved at the gaining installation. This includes full-time Mail Handlers assigned to the gaining installation.

Employees involuntarily reassigned under 12.6C6 shall be entitled to be returned to the first vacancy in any level, in the craft or occupational group in the installation from which reassigned, and such entitlement such be honored until the employee withdraws or declines to accept an opportunity to return.

**This MOU reaffirms management’s right to demote an EAS employee or to reinstate a former employee into the mail handler craft without having to go through the steps of the MOU RE: Filling of Residual Vacancies. The employee’s status and seniority will be in accordance with the arbitration award issued by Carlton Snow dated August 13, 1990.**

**The NPMHU intervened in a national level NALC grievance where the unions argued an employee who was involuntarily reassigned out of his or her installation can exercise retreat rights back to that installation “into the**

**first vacancy in the level, in the craft or occupational group in the installation from which reassigned.” Arbitrator Das denied the grievance.**

**Relying on Article 12, Section 5.C.5.b.(6), the NALC took the position that the employee could exercise retreat rights when, ten days after the employee was involuntarily reassigned, a letter carrier in the original installation retired thereby creating a vacancy. The Postal Service took the position that the letter carrier may only exercise his or her retreat rights upon the creation of a residual vacancy. Arbitrator Das denied the grievance, agreeing with the Postal Service that an employee involuntarily reassigned out of his or her installation can only exercise retreat rights to a residual vacancy.**

**Arbitrator Das concluded that, “while Section 5.C.5.b.(6) does not use the term ‘residual vacancy,’ that is the only vacancy to which a carrier involuntarily reassigned to another location could be returned consistent with other provisions of the National Agreement.”**

All newly created duty assignments and remaining vacant duty assignments shall be posted for bid at the close of the detail period. All full-time mail handlers then assigned to the centralized installation are eligible to bid. Again the 120-day period begins with the detail/reassignment of the first full-time employee.

**C7 Reassignment-Part-time Flexible Employees in Excess of the Needs of the Craft/Installation**

Where there are excess part-time flexible employees in the craft for whom work is not available, part-time flexibles lowest on the part-time flexible roll equal in number to such excess may at their option be reassigned to the foot of the part-time flexible roll in the same or another craft in another installation.

Excess part-time flexible employees may, at their option, be reassigned to the part-time flexible rolls in the same or another craft in another installation, or to another craft in the same installation, and begin a new period of seniority.

Although the negotiated language contains the phrase “at their option,” part-time flexibles may be involuntarily reassigned pursuant to Section 12.6C7e, f, and g. The option applies to where they select available vacancies.

**C7a An excess part-time flexible employee reassigned to another craft in the same or another installation shall be assigned to the foot of the part-time flexible roll and begin a new period of seniority.**

This provision provides for the reassignment of excess part-time flexibles across craft lines in the same or another installation. When reassigned, part-time flexible employees are placed at the foot of the gaining part-time flexible roll and begin a new period of seniority.

C7b An excess part-time flexible employee reassigned to the same craft in another installation shall be assigned the seniority and relative standing the employee had in the losing installation.

C7c A senior part-time flexible in the same craft or occupational group in the same installation may elect to be reassigned in another installation in the same or another craft and take the seniority, if any, of the senior excess part-time flexible being reassigned, as set forth in 12.6C7a and 12.6C7b above.

Section 12.6C7c provides that a senior part-time flexible employee in the same craft or occupational group in the same installation may elect to be reassigned to another installation in the same or another craft and take the seniority, if any, of the senior excess part-time flexible subject to reassignment pursuant to Section 12.6C7a and b.

The provisions of a, b, and c provide that seniority for part-time flexibles would be established as follows:

- A senior part-time flexible employee volunteering to be reassigned to another craft in the same or another installation in lieu of a junior part-time flexible employee subject to involuntary reassignment would be reassigned to the “foot” of the part-time flexible roll and would begin a new period of seniority pursuant to Section 12.6C7a.
- A senior part-time flexible employee volunteering to be reassigned to the same craft in another installation in lieu of a junior part-time flexible employee subject to involuntary reassignment would be reassigned **with the seniority and relative standing of the employee that s/he was reassigned in lieu of.**

C7d The Postal Service will designate, after consultation with the Union, vacancies at installations in which excess part-time flexibles may request to be reassigned beginning with vacancies in other crafts in the same installation; then vacancies in the same craft in other installations; and finally vacancies in other crafts in other installations making the designations to minimize relocation hardships to the extent practicable.

Section 12.6C7d provides that the Postal Service, after consultation with the Union, will designate vacancies at installations in which excess PTFs may request to be reassigned, in the following order:

1. Vacancies in other crafts in the same installation;
2. Then vacancies in the same craft in other installations;
3. Then vacancies in other crafts in other installations.

When the Postal Service designates the vacancies, it is required to minimize relocation hardships to the extent possible.

C7e Part-time flexibles reassigned to another craft in the same installation shall be returned to the first part-time flexible vacancy within the craft and level from which reassigned.

When a PTF is reassigned to another craft in the same installation, he/she shall be returned to the first PTF vacancy within the craft and level from which reassigned. This provision is mandatory.

C7f Part-time flexibles reassigned to other installations have retreat rights to the next such vacancy according to their standing on the part-time flexible roll in the losing installation but such retreat right does not extend to part-time flexibles who elect to request reassignment in place of the junior part-time flexibles.

C7g Retreat rights shall be honored until the employee withdraws or an opportunity to return is declined, with full seniority or relative standing held in the installation from which reassigned plus credit for service for the time away from the installation.

Sections 12.6C7f and C7g govern retreat rights. Under Section 12.6C7f, PTFs who are reassigned to other installations have retreat rights to the next vacancy according to their standing on the PTF roll in the losing installation, unless the PTF elects to request reassignment in place of a junior PTF under Section 12.6C7c. Under Section 12.6C7g, **retreat rights shall be honored until the employee withdraws or declines an opportunity to return.**

**Question: Do career mail handlers have to submit a written request for retreat rights?**

**Answer: No, retreat rights no longer require a written request by the employee.**

## D Part-Time Regular Employees

Part-time regular employees assigned in the craft unit shall be considered to be in a separate category. All provisions of this Section apply to part-time regular employees within their own category.

Part-time regulars are a separate category for the purposes of applying Section 12.6. They can be involuntarily reassigned, if necessary, using the provisions of Section 12.6C1 through 6, as appropriate.

MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
NATIONAL POSTAL MAIL HANDLERS UNION  
AND THE  
UNITED STATES POSTAL SERVICE

RE: Excessing Issues

This Memorandum of Understanding (MOU) represents the parties' agreement with regard to mail handler employees who are being involuntarily reassigned into mail handler craft vacancies in other installations, after being excessed from their present installation.

1. Mail handlers will be placed into mail handler vacancies at the gaining installation at the same, higher, or lower level for which they are qualified.
2. Mail handlers will be excessed from the losing installation by inverse seniority in their craft by status (full-time regular, part-time regular, part-time flexible), without concern to level.
3. If a veteran preference eligible is reached when assigning impacted or unassigned employees to lower level duty assignments the following will apply:
  - a. The most junior non-preference eligible same level mail handler in the gaining installation shall be reassigned to the lower level vacancy.
  - b. The impacted preference eligible mail handler will then be assigned to the duty assignment previously occupied by that junior non-preference eligible mail handler.
  - c. Any employee reassigned to a lower level duty assignment shall receive saved grade and shall not be required to bid to their former level for two years to retain the saved grade.

- d. The non-preference eligible mail handler moved to the lower level duty assignment shall have retreat rights back to the former duty assignment the first time it becomes vacant.
  - e. A veteran preference eligible mail handler for personal convenience may waive the right to appeal through the grievance process, to the Equal Employment Opportunity Commission, and/or to the Merit Systems Protection Board and select a duty assignment at a lower level with saved grade with the same saved grade in 3c above.
  - f. If no Level 5 vacancies exist, or if all Level 5 occupied positions at the gaining installation are occupied by veteran preference eligible mail handlers, the withholding radius will be expanded to allow for placement unless the veteran preference eligible applies 3e above.
4. The Regional Director for the National Postal Mail Handlers Union (NPMHU) will receive at least 30-days notice for excessing outside of the installation that does not involve employee relocation. Such notice shall include a list of potential vacancies for reassignments. The impacted employees will receive the same notice at least 30 days in advance.
5. The Regional Director for the NPMHU will receive at least 60-days notice for excessing outside of the installation where employee relocation benefits are applicable. Such notice shall include a list of potential vacancies for reassignments. Impacted employees will receive the same notice at least 60 days in advance.
6. Impacted mail handlers, and senior in lieu of volunteers, may be placed as unassigned regular mail handlers in the gaining installation (A Level 5 veteran preference employee who has been involuntarily excessed will be subject to paragraph 3 above), provided that local management has completed a bid management review with area concurrence and sufficient vacancies will be available for placement of all such unassigned regular employees (regardless of level) within three months of the date the employees were placed. These mail handlers must bid on all available vacancies in the gaining installation or be immediately placed into the first available residual vacancy by management in accordance with the provisions of Article 12 of the National Agreement, provided that Level 5 veteran preference mail handlers who were involuntarily excessed will only be placed into Level 5 residual vacancies or in accordance with paragraph 3.
7. The Postal Service (USPS) has agreed to develop an enhancement to eReassign to enable mail handlers from an impacted installation to receive priority consideration for a voluntary transfer. Management will accept the employee at the gaining installation without a review. However, regular transfer rules concerning other issues such as seniority, status, no relocation

benefits, and no retreat rights will continue pursuant to items F, G, H, and I of the MOU, Re: Transfers.

8. If there is a local need to delay the reassignment of impacted mail handlers from the losing installation, management at the gaining installation will have the right to retain or hire casuals for up to 90 days. This shall be considered a legitimate reason for the retention or hiring of casuals. The number of casuals retained or hired shall be limited to the number of mail handlers delayed in reporting to the gaining installation, but will not be restricted by the **3.0%** percent installation limitation. Such casuals will be identified to the union and separated one-for-one as the excessed mail handlers report to the installation.
9. Any disputes arising from the terms of this MOU, or other Article 12 local issues, will be resolved by the National NPMHU- USPS Article 12 Task Force. If the Article 12 Task Force cannot agree upon a resolution, either party may declare an impasse. Each party will identify the issue in dispute in writing within 30 days after the declared impasse on the subject. The identified dispute will then be placed on the appropriate arbitration docket.

**The following is a series of jointly agreed to questions and answers, dated August 10, 2011, interpreting the MOU on Excessing Issues:**

**ARTICLE 12 MOU  
USPS-NPMHU QUESTIONS AND ANSWERS**

**Q1. What is the scope of this MOU?**

**A1. The terms of the Article 12 MOU apply to impacted and senior in lieu of volunteer mail handlers being placed into the mail handler craft. The terms of the MOU do not apply for placement into positions outside of the mail handler craft.**

**Q2. When are the terms of the MOU in effect?**

**A2. The terms of the MOU are effective on the date the parties signed and do not apply for excessing activity already completed.**

**Q3. What is a veteran preference eligible employee?**

**A3. Certain employees are entitled to additional protection under the Veterans Preference Act of 1944, as amended, and in various sections of federal statutes. Check the ELM 354.215 to determine your eligibility.**

**Q4. What is saved grade as outlined in this Article 12 MOU?**

**A4. An employee receiving saved grade will be paid as if they were still within their former level. To continue receiving saved grade, an employee must bid or apply for all vacancies in their former level for which they are eligible to bid or apply. If an employee fails to bid to a job in their former level they will forfeit the saved grade. The terms of this MOU provide the employee with two years of saved grade during which they are not required to bid to retain their saved grade.**

**Q5. For how long will saved grade continue?**

**A5. Saved grade will continue for an indefinite term as long as the employee meets the obligation to bid for jobs in their former level. An employee may also bid for MH-4 vacancies without loss of saved grade as long they also bid for all vacancies posted in their former higher level. The terms of this MOU provide the employee with two years of saved grade during which they are not required to bid or apply to retain their saved grade.**

**Q6. If a non veteran preference eligible employee is moved to a job in a lower pay level will he/she have retreat rights?**

**A6. Yes. The employee may retreat to their former assignment upon the first opportunity (vacancy). If the employee fails to do so at the first opportunity he/she will lose the right to retreat.**

**Q7. Is moving a non veteran preference eligible employee to a lower level to allow for placement of a veteran preference eligible employee in the same pay level considered bumping?**

**A7. No. It is considered an application of veteran preference rights to comply with federal law.**

**Q8. When does the 30/60 day notice period begin for excessing?**

**A8. The 30/60 day notice to the NPMHU begins when the Postal Service provides written notice and an Impact Report (AIR) to the union; the 30/60 day notice to the employee begins when the employee receives written notice from the Postal Service.**

**Q9. What will initiate relocation benefits for impacted/senior in lieu of volunteer employees, which provide for the 60 day notice period?**

**A9. Basically, the commute of an impacted/senior in lieu of volunteer employee must increase by 50 miles, the IRS regulation. For example, presently an employee commutes 30 miles from home to work. If that commute would increase to 80 miles as a result of the excessing placement,**

**the impacted/senior in lieu of employee would be eligible for relocation benefits.**

**Q10. Where can I find information on relocation benefits?**

**A10. Each district has a relocation benefits coordinator and they have pamphlets to distribute when necessary.**

**Q11. Is the Postal Service restricted in the number of casuals which may be hired/retained when impacted/senior in lieu of volunteer employees are delayed in their reassignment?**

**A11. No. The Postal Service may add/retain casuals in the gaining installation on a one for one basis up to the number of employees delayed without regard to any existing contractual restriction contained in Article 7 of the Collective Bargaining Agreement, any arbitration decision, or other source. This is addressed in item 8 of the Excessing Issues MOU.**

**Q12. What is the term of this MOU?**

**A12. The MOU will remain in effect unless the parties mutually agree to end it. The parties will evaluate the terms of the MOU during the 2011 national negotiations to determine if it should be made a permanent part of the CBA.**

**Q13. How will disputes be resolved concerning the application of the MOU?**

**A13. Any disputes arising from the application of the terms of this MOU will be referred to the parties at the national level.**

**Q14. What is Priority Consideration for mail handlers in eReassign?**

**A14. Mail handlers from impacted installations will be placed at the top of the list in eReassign for transfer to mail handler assignments at gaining installations. Please refer to the NPMHU-USPS eReassign MOU for further details on Priority Consideration.**

### **Section 12.7 Transfer Request**

- A** Prior to hiring Mail Handlers, installation heads will consider requests for transfers submitted by Mail Handlers from other installations.
- B** Providing a written request for a voluntary transfer has been submitted, a written acknowledgment shall be given in a timely manner.

The provisions of Section 12.7 must be read in conjunction with the Memorandum of Understanding on Transfers, which appears in the National Agreement and is reprinted below.

This section requires installation heads to consider request for transfers from employees from other installations. It also provides that if a written request is received, a timely written acknowledgment must be given.

The denial of a transfer request is a grievable matter. When the denial of a transfer request is grieved, the disputed decision is made by the installation head or other management representative at another installation. Nonetheless, any grievances concerning the denial of a transfer request must be filed with the aggrieved employee's immediate supervisor as required by Article 15. Arbitrators from one Region have the authority to order managers in another Region to accept a transfer request.

C An employee whose transfer is approved will be allowed to use up to five (5) days of annual leave or five (5) days leave without pay for purpose of transferring.

[See Memos, pages 166, 169, 172]

This provision authorizes the employee to use leave during the transfer period.

**Question: Is the mutual swapping/exchanging of positions applicable to the mail handler craft?**

**Answer: No, there are no provisions for mutual swapping/exchanging of positions in the NPMHU/USPS National Agreement.**

**Source: ELM Section 351.6; Memorandum Re Mutual Swap Seniority Rules from Anthony J. Vegliante to Managers, Human Resources, dated June 7, 1995.**

## MEMORANDUM OF UNDERSTANDING

### Re: Transfers

The parties agree that the following procedures will be followed when career Postal employees request reassignment from one Postal installation to another.

#### Reassignments (Transfers)

A. Installation heads may continue to fill authorized vacancies first through promotion, internal reassignment and change to lower level, transfer from other

agencies, reinstatements, etc., consistent with existing regulations and applicable provisions of the National Agreement.

The memorandum obligates management to give full consideration to transfer requests before seeking to fill vacancies with new hires from registers. However, it does not change existing regulations, such as those in the EL-312, concerning first filling vacancies through promotion, internal reassignment and change to lower level, transfer from other agencies, reinstatements, etc.

B. Installation heads will afford full consideration to all reassignment requests from employees in other geographical areas within the Postal Service. The requests will be considered in the order received consistent with the vacancies being filled and type of positions requested. Such requests from qualified employees, consistent with the provisions of this memorandum, will not be unreasonably denied. Local economic and unemployment conditions, as well as EEO factors, are valid concerns. When hiring from entrance registers is justified based on these local conditions, an attempt should be made to fill vacancies from both sources. Except in the most unusual of circumstances, if there are sufficient qualified applicants for reassignment, at least one out of every four vacancies will be filled by granting requests for reassignment in all offices of 100 or more man-years if sufficient requests from qualified applicants have been received. In offices of less than 100 man-years a cumulative ratio of 1 out of 6 for the duration of the National Agreement will apply.

Transfer requests from qualified employees will not be unreasonably denied. However, management may take into account local economic and unemployment conditions and EEO concerns to justify hiring from registers. Except in the most unusual of circumstances, if there are sufficient qualified applicants for reassignment, management must comply with the following minimums:

- In all offices of 100 or more man-years, at least one out of every four vacancies will be filled by granting requests for reassignment.
- In all offices of less than 100 man-years, at least one out of every six vacancies during the duration of the National Agreement will be filled by granting requests for reassignment.

C. Districts will maintain a record of the requests for reassignment received in the offices within their area of responsibility. This record may be reviewed by the Union on an annual basis upon request. Additionally, on a semiannual basis, local Unions may request information necessary to determine if a 1 out of 4 ratio is being met between reassignments and hires from the entrance registers in all offices of 100 or more man-years.

When requests for transfers are received, a record of the request is maintained in the District that has responsibility for that installation. The Union has a right to review this record on an annual basis upon request; on a semi-annual basis, the local union may request information to determine if the 1 to 4 ratio is being met in offices of 100 or more man-years.

Local management may not refuse to forward an employee's personnel folder to another installation in order to prevent or delay the consideration of the employee's request for transfer.

Source: Step 4 Grievance H4N-5C-C 14779, dated May 1988.

D. Managers will give full consideration to the work, attendance which is not in accordance with and protected by the Family and Medical Leave Act (FMLA), and safety records of all employees who are considered for reassignment. An employee must have an acceptable work, attendance, and safety record and meet the minimum qualifications for all positions to which they request reassignment. Both the gaining and losing installation head must be fair in their evaluations. Evaluations must be valid and to the point, with unsatisfactory work records accurately documented.

In evaluating transfer requests, managers will give full consideration to the work, attendance, and safety records of all employees who are considered for reassignment. New language in the 2006 National Agreement prohibits leave taken under the FMLA from being considered when evaluating an employee's request for transfer. Additionally, local managers may not add additional criteria for accepting transfer requests; for example, a policy of only accepting transfer requests from within the District would be a violation of the MOU.

Evaluations must be fair, valid and to the point, with unsatisfactory work records accurately documented. They must be based upon an examination of the totality of the requesting employee's individual work record. Evaluations based on the application of arbitrary standards such as a defined minimum sick leave balance do not meet this standard.

1. For reassignments within the geographical area covered by a District or to the geographical area covered by adjacent Districts, the following applies: An employee must have at least eighteen months of service in their present installation prior to requesting reassignment to another installation. Employees reassigned to installations under the provisions of this memorandum must remain in the new installation for a period of eighteen months, unless released by the installation head earlier, before being eligible to be considered for reassignment again, with the following exceptions: 1.) in the case of an employee who requests to return to the installation where he/she previously worked; 2.) where an employee can substantially increase the number of hours (8 or more hours per week) by transferring to another installation and the employee meets the other criteria, in

which case the lock-in period will be 12 months. These transfers are included in the 1 out of 4 ratio.

2. For all other reassignments, the following applies: An employee must have at least one year of service in their present installation prior to requesting reassignment to another installation. Employees reassigned to installations under the provisions of this memorandum must remain in the new installation for a period of one year, unless released by the installation head earlier, before being eligible to be considered for reassignment again, except in the case of an employee who requests to return to the installation where he/she previously worked.

These paragraphs provide particular rules with regard to local reassignments (defined as those within a District or to adjacent Districts) or to other reassignments. There is an important difference with regard to the “lock-in period:” a local reassignment requires 18 months of continuous service in the prior installation and, with certain exceptions, 18 months of service in the new installation; for a non-local transfer, the lock-in periods generally are one year. The exceptions in each instance are outlined in the MOU **and as follows:**

**The parties have agreed that the lock in periods of 18 months or 12 months otherwise provided for in paragraphs (D)(1) and (D)(2) of the Memorandum of Understanding Re: Transfers shall not apply to mail handlers who are involuntarily reassigned to an installation. However, if an involuntarily reassigned employee successfully transfers to a new installation, the normal lock-in period at the new installation will apply.**

**The parties have further agreed that the lock-in periods referenced in paragraphs (D)(1) and (D)(2) in the Memorandum of Understanding on Transfers shall include all continuous time in the mail handler craft spent in the employee’s present installation. Thus, time spent as a Mail Handler Assistant (MHA), Part-Time Flexible (PTF), Part-Time Regular (PTR), or Full-Time Regular (FTR) will all count toward the lock-in period, the required 5-day break for MHAs every 360 calendar days notwithstanding.**

E. Installation heads in the gaining installation will contact the installation head of the losing installation and arrange for mutually agreeable reassignment and reporting dates. A minimum of thirty days notice to the losing office will be afforded. Except in the event of unusual circumstances at the losing installations, reasonable time will be provided to allow the installation time to fill vacancies, however, this time should not exceed ninety days.

Read as a whole, this section provides that “except in unusual circumstances at the losing installation,” the reporting date at the new installation will be a minimum of 30 days and should not be more than 90 days after a transfer

request is approved. The installation head of the losing installation may not deny an approved transfer.

F. Reassignments granted to a position in the same grade will be at the same grade and step. Step increase anniversaries will be maintained. Where voluntary reassignments are to a position at a lower level, employees will be assigned to the step in the lower grade consistent with Part 420 of the Employee and Labor Relations Manual.

In no case may an employee be required or requested to accept pay at a lower step as a condition for transfer. Employees' period step increases following a transfer continue exactly as they would have progressed had the employee not transferred, but instead remained in the original installation. When voluntary reassignments are to a position at a lower level, the employee's step and waiting period for the next step increase will be established in accordance with the normal rules in ELM 420.

G. Employees reassigned under these provisions will be reassigned consistent with the provisions contained in the National Agreement. Employees will not be reassigned to full-time regular positions to the detriment of career part-time flexible employees who are available for conversion at the gaining installation. Seniority for employees transferred per this memorandum will be established consistent with the provisions of the National Agreement.

The seniority of mail handlers voluntarily transferred to another installation is governed by the seniority provisions of the gaining craft.

If the transfer is to another mail handler position in another installation, the employee will begin a new period of seniority as a part-time flexible employee, **if such status is available in the installation. If the transfer is to a mail handler position other than part-time flexible, the employee will begin a new period of seniority.**

H. Relocation expenses will not be paid by the Postal Service incident to voluntary reassignment. Such expenses, as well as any resulting interview expenses, must be borne by employees.

All moving expense must be borne by the employee who requested the transfer.

I. Under no circumstances will employees be requested or required to resign, and then be reinstated in order to circumvent these pay provisions, or to provide for an additional probationary period.

Transferred employees should have continuous service and are not required to serve a new probationary period.

MEMORANDUM OF UNDERSTANDING  
BETWEEN THE NATIONAL POSTAL MAIL HANDLERS UNION  
AND THE UNITED STATES POSTAL SERVICE

Re: Transfer Opportunities to Minimize Excessing Pursuant to the Memorandum of Understanding (MOU) on Transfers

In their 2006 National Agreement, the parties agreed to a Joint Task Force on Article 12 for the purpose of discussing and reviewing issues that arise as a result of implementing the provisions of Articles 12.5 and 12.6. In addition, in August 2009, the parties agreed to a Memorandum of Understanding, Re: One-Time Retirement Incentive, as well as a moratorium on excessing from the date of that MOU through October 9, 2009. The parties also recognized that they might need to discuss application or modification of the requirements under Article 12 based on the impact of that MOU.

The parties have continued to meet at the National level, and have reached the following additional agreements with regard to Mail Handler employees in installations experiencing excessing from the installation who seek transfer opportunities under Article 12 and the MOU on Transfers.

1. All Mail Handler employees in the installation, including those employees experiencing excessing from the installation, may voluntarily submit a request for transfer through eReassign. These employees will be placed on a preferred listing within eReassign by date order. These volunteers will be allowed to transfer out of their impacted installation in accordance with the MOU on Transfer Opportunities to Minimize Excessing.
  - A. Affected employees requesting transfer must meet the minimum qualifications for the position being considered.
  - B. In accordance with applicable provisions of the EL-312 Handbook, nepotism rules are still in effect.
  - C. The following sections of the Memorandum of Understanding Re: Transfers (pages 128-130 of the 2006 National Agreement) are modified in order to accommodate transfer opportunities to minimize excessing. Specifically:
    - (1) Sections B & C (page 128) — Ratios contained in the Transfer MOU are not applicable to affected employees applying for transfer as a result of impending excessing.
    - (2) Section D (page 129) — Affected employees work, attendance, and safety records will not be considered when applying for transfer as a result of impending excessing.



7. As a result of the MOU, there are no changes to the Article 12 time frames for notification to the union.
8. Disputes arising from the application of this MOU will be processed at the National level under the jurisdiction of the National Administrative Committee.
9. The lock-in periods do not apply to the eReassign Priority Consideration MOU at the losing installation.

**The following is a series of jointly agreed to questions and answers interpreting the above MOU on Transfer Opportunities to Minimize Excessing.**

**Questions and Answers  
eReassign Priority Consideration  
NPMHU - USPS**

**These questions and answers are provided to serve as a guide to the memorandum of understanding providing priority consideration for mail handlers from impacted installations applying for transfer in eReassign.**

- Q1. Does this MOU apply for transfer to crafts other than the mail handler craft?**
- A1. No. This MOU only applies for transfer of mail handlers to mail handler assignments. All other transfers to different crafts will be conducted under the regular eReassign rules.**
- Q2. What is priority consideration?**
- A2. All mail handlers from installations where there is Article 12 impact may apply for vacancies advertised in eReassign and will be placed at the top of the list for consideration to transfer.**
- Q3. Will the Postal Service review my record before accepting me at the gaining installation?**
- A3. No. The Postal Service will not review your attendance or safety records, or your supervisor's evaluations in the process to determine if you will be granted the transfer.**
- Q4. How will I know if I received priority consideration?**
- A4. eReassign will provide notice of priority consideration to the employee when the employee enters his/her application information in the system.**

- Q5. Will I retain my seniority when I receive priority consideration?**
- A5. No. Please check Article 12.2.F.I.b of the National Agreement for guidance.**
- Q6. If I am selected for the transfer in eReassign can I change my mind?**
- A6. You may change your mind and decline the transfer up to the point when you receive written notice of your acceptance.**
- Q7. If I decline the transfer opportunity, and I have been identified as an impacted employee will I be excessed?**
- A7. Yes. If you decline the transfer and you are an impacted employee you will immediately become available for involuntary Article 12 reassignment.**
- Q8. Will I receive relocation benefits under priority consideration?**
- A8. No. eReassign is used for voluntary transfers and relocation benefits are not authorized.**
- Q9. If two or more mail handlers apply in eReassign at the same time who will first be offered the transfer?**
- A9. The eReassign Priority Consideration MOU has tie breakers included.**
- Q10. Where can I get a copy of the MOU?**
- A10. HR Local Services can provide you with a copy. The Priority Consideration MOU will be posted on the eReassign home page.**
- Q11. If I already have an application to transfer in eReassign and my installation becomes impacted by Article 12, what must I do to gain priority consideration?**
- A11. You must delete your prior request and reapply.**
- Q12. Does all Article 12 impact provide priority consideration?**
- A12. No. Priority consideration is granted when there is excessing identified outside of the installation.**
- Q13. Are there any qualifications I must meet to be eligible for transfer?**

**A13. Yes. You must meet the minimum qualifications identified for the assignment before you will be considered eligible for the transfer.**

**Q14. If I accept a transfer offer in eReassign what happens to other active requests I may have?**

**A14. All other requests will be removed from eReassign.**

**Q15. Do the lock-in periods in the Transfer MOU apply to this eReassign MOU?**

**A15. The lock-in periods do not apply to the eReassign Priority Consideration MOU at the losing installation.**

## **MEMORANDUM OF UNDERSTANDING**

### **EMPLOYEE BIDDING**

The following conditions have been agreed to in the implementation of the telephone bidding system:

1. There will be a one hundred and twenty (120) day transition period following the implementation of telephone bidding at an installation, during which employees may submit bids either by telephone or in writing. The one hundred and twenty (120) days will run from the first day on which telephone bidding is implemented at an installation.
2. There will be a toll-free telephone number available from any telephone, as well as TDD.
3. Telephone bidding shall be available during the following days and hours (including holidays): Monday through Friday, 6:00 a.m. to Midnight (Central Time), and Saturday, 6:00 a.m. to 6:00 p.m. (Central Time).
4. All bids shall close at midnight (Central Time) on a weekday on which the telephone bidding system is available until midnight.
5. Employees can enter, withdraw and/or review the status of their bids.
6. Employees will need their Employee Identification Number and Personal Identification Number (PIN) to access the telephone bidding system.
7. When an employee has reached his/her successful bid limit, as set forth in Article 12.3A of the National Agreement, the system will still allow bids to be entered, but the bid will be flagged by the system as “ineligible”. A system message will notify the employee to contact management. The personnel

office will routinely review job bidding reports prior to awarding the bid to investigate ineligible bids, and to determine if there are situations as provided for in Article 12.3A for which the employee's bid count must be manually adjusted to make the bid(s) eligible. It is the responsibility of the employee to notify management if a bid flagged as ineligible is proper under Article 12.3A3 because the employee is bidding on an assignment that is "closer to the employee's place of residence." It is the responsibility of management to identify and rectify all other situations in which eligible bids are erroneously flagged by the system as ineligible.

As one part of an effort to protect employees against identity theft, Social Security Numbers have been replaced with Employee Identification Numbers. New language also reflects the migration of Human Resources functions to the HR Shared Services environment.

## **LETTER OF INTENT**

### **SACK SORTER MACHINE OPERATOR**

The parties hereby agree that effective July 21, 1987, all future postings of the position, Sack Sorting Machine Operator, salary level MH-5, standard position 2-438, shall be filled by the senior qualified bidder meeting the qualification standard for the position.

## **LETTER OF INTENT**

### **REVERSION NOTICE**

William H. Quinn  
National President  
National Postal Mail Handlers  
Union, AFL-CIO  
1101 Connecticut Ave. NW STE 500  
Washington DC 20036-4304

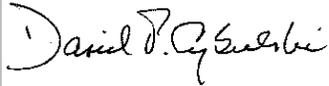
Re: Reversion Notice

Dear Mr. Quinn:

During negotiation of the 1998 National Agreement between the U.S. Postal Service and the National Postal Mail Handlers Union, a Division of the Laborers' International Union of North America, AFL-CIO, the parties agreed to modify Article

12.3B3 by requiring that the Employer provide the appropriate Union official with a copy of the notice indicating that a bargaining unit assignment was being reverted.

This is to confirm that, in our discussions on this matter, the parties agreed that the only remedy that the Union has relative to a failure to provide such notice is the preservation of the Union's right to grieve such reversion, until such time as the Union receives the notice.



David P. Cybulski  
Manager  
Labor Relations  
U.S. Postal Service

### MEMORANDUM OF UNDERSTANDING

#### CROSS CRAFT

It is understood by the parties that in applying the provisions of Articles 7, 12 and 13 of this Agreement, cross craft assignments of employees, on both a temporary and permanent basis, shall continue as they were made among the six crafts under the 1978 National Agreement.

### MEMORANDUM OF UNDERSTANDING

#### Re: Joint Task Force on Article 12

The parties agree to establish a joint task force for the purpose of discussing and reviewing issues that arise as a result of implementing the provisions of Articles 12.5 and 12.6. The task force shall consist of at least four persons, two each selected by the Employer and the Union.

The work of the task force may include a review of issues that have arisen at the Area and local levels, including the extent of withholding in specific geographic areas or at particular locations. The task force shall make such findings and recommendations as it deems appropriate to facilitate compliance with the principles and requirements of Article 12 and any other related contractual obligations. These recommendations will be submitted to the Postal Service's Vice President, Labor Relations and to the President of the Union. The parties are committed to taking prompt action with respect to the work of the task force.

**The arbitration panel determines that the following issues shall be referred to the Article 12 Task Force, which shall meet and discuss these issues within 45 days of the release of this Award:**

- Whether management should notify the union when an installation is released from withholding, in whole or in part**
- Whether senior employees may choose between staying in the installation in another craft or being reassigned to another installation in the same craft, under Article 12.6C5a4**

#### **MEMORANDUM OF UNDERSTANDING**

Under Article 12.6B1, the dislocation and inconvenience to full-time and part-time flexible employees who are being involuntarily reassigned shall be kept to the minimum consistent with the needs of the service. In addition, under Article 12.6B2, the Vice President, Area Operations shall give full consideration to withholding sufficient full-time and part-time flexible positions within the area for full-time and part-time flexible employees who may be involuntarily reassigned.

The Joint Task Force on Article 12 shall meet after the effective date of this Agreement to explore ways to reduce unnecessary impact on career employees while maintaining utilization of the non-career workforce.

#### **MEMORANDUM OF UNDERSTANDING**

##### **POTENTIAL FOR MAIL HANDLER ASSISTANT PTF OPPORTUNITIES**

The Article 12 Task Force at the national level will meet to discuss the potential for offering to Mail Handler Assistants (MHAs) conversion opportunities to any newly established or vacant part-time career positions where MHAs are employed within fifty (50) miles of the positions.

#### **MEMORANDUM OF UNDERSTANDING**

##### **PTFS IN 200 MAN YEAR FACILITIES SUBJECT TO EXCESSING**

If one or more employees in a 200 man year facility are subject to excessing outside of the installation, the parties at the Regional/Area may enter into an agreement which allows employees to remain in the installation as part-time flexibles (PTFs). The exact number of employees to remain in the installation as PTFs will be determined by the Employer based on the operational need to perform the remaining mail handler work in the facility. If no employees elect to remain as PTFs in the facility, the

**Employer may hire additional mail handler assistant employees (MHAs) who will not be counted against any cap limitation provided the work remains part-time.**

**This addition to the 2016 National Agreement allows employees in a 200 man year facility, when subject to excessing outside of the installation, to remain in the installation as PTFs. Such opportunities depend on the Postal Service’s determination, based on operational needs, of the need to perform remaining mail handler work in the installation subject to excessing, and to agreement of the parties at the Regional/Area level. If no full-time or part-time regular employees elect to remain as PTFs in the installation, then management may hire additional MHAs who will not be counted against any cap limitation.**

### **MEMORANDUM OF UNDERSTANDING**

#### **Re: Workforce Repositioning**

The parties are committed to work together to the extent it becomes necessary to close or consolidate postal plants or other facilities. The parties will explore available options that can address related workforce issues. The Postal Service will meet with the Union at the national level to discuss plans to close or consolidate postal plants or other facilities and to discuss and consider changes to such plans based on input from the Union. Those discussions will include appropriate consideration of the principles and requirements of the applicable provisions of Article 12, including the principle that, in effecting reassignments, dislocation and inconvenience to employees shall be kept to a minimum, consistent with the needs of the Postal Service.

Nothing in this memorandum is intended to negate or alter the applicable requirements of Article 12 of the National Agreement.

This Memorandum of Understanding will terminate upon the expiration of the extension to the **2016** National Agreement.

The parties have continued agreements establishing a Joint Task Force on Article 12, to deal with issues related to employee reassignments, and committing to work together on issues involving workforce repositioning resulting from the closure or consolidation of postal facilities.

## **ARTICLE 13 ASSIGNMENT OF ILL OR INJURED REGULAR WORK FORCE EMPLOYEES**

The provisions of Article 13 govern voluntary requests for light duty or other assignment by employees who are temporarily or permanently incapable of performing their normal duties as a result of illness or injury.

The term “light duty” often is confused with the term “limited duty”. The term “limited duty” is not used in this article. The parties have a continuing dispute over the meaning and applicability of these two terms. Limited duty may be provided for an employee who is temporarily or permanently incapable of performing his/her normal duties as a result of a job-related compensable illness or injury.

In any event, the parties agree that an employee who has suffered a compensable illness or injury – that is, an employee who is temporarily or permanently incapable of performing his/her normal duties because of a job-related illness or injury - may seek permanent light duty work through the procedures provided in Article 13. In most circumstances, however, such employees will find the procedures and regulations provided in ELM, Subchapter 540 better suited to their needs. The limited duty provisions contained in ELM, Subchapter 540 will be discussed further at the end of this article.

### **Section 13.1 Introduction**

- A Part-time fixed schedule employees assigned in the craft unit shall be considered to be in a separate category. All provisions of this Article apply to part-time fixed schedule employees within their own category.

Part-time fixed schedule employees are also known as part-time regulars. They are in a category separate and apart from full-time and part-time flexible employees, but Article 13 applies to these employees within their own category.

- B The U.S. Postal Service and the Union, recognizing their responsibility to aid and assist deserving full-time regular or part-time flexible employees who through illness or injury are unable to perform their regularly assigned duties, agree to the following provisions and conditions for reassignment to temporary or permanent light duty or other assignments. It will be the responsibility of each installation head to implement the provisions of this Agreement within the installation, after local negotiations.

In this paragraph, the parties recognize their responsibility for aiding and assisting employees who through illness or injury are unable to perform their regularly assigned duties.

A Step 4 decision issued under the 1978 National Agreement provided the following interpretation regarding management's responsibilities:

While the Postal Service strives to accommodate all injured employees, its responsibilities toward employees injured on duty differ from its responsibilities toward employees whose injuries or illnesses are not job related. As outlined in Part 546, Employee and Labor Relations Manual, the Postal Service has certain legal obligations to employees with job related disabilities pursuant to 5 U.S.C. §8151 and Office of Personnel Management regulations. Article 21, Section 4, of the National Agreement acknowledges these legal obligations toward employees injured on the job and Article 13 recognizes the importance of attempting to accommodate employees whose injuries or illnesses are not job related. However, the statutory and regulatory responsibilities toward on-the-job injuries are obligatory in nature and given priority consideration when assigning ill or injured employees.

The provisions promulgated in Part 546 of the Employee and Labor Relations Manual for reemploying employees partially recovered from a compensable injury on duty were not intended to disadvantage employees who occupy assignments properly secured under the terms and conditions of the collective bargaining agreement. This includes employees occupying permanent or temporary light-duty assignments acquired under the provisions set forth in Article 13 of the National Agreement.

Source: Step 4 Grievance H8N-NA-C 53, dated February 7, 1983.

As discussed below, Article 30, (Section 30.2) Items M, N and O provide for the identification of light duty assignments during local implementation. However, if an agreement is not reached during local implementation, that would not prevent an eligible employee from requesting light duty or other assignments under Article 13.

## **Section 13.2 Employee's Request for Reassignment**

### **A Temporary Reassignment**

Any full-time regular or part-time flexible employee recuperating from a serious illness or injury and temporarily unable to perform the assigned duties may voluntarily submit a written request to the installation head for temporary assignment to a light duty or other assignment. The request shall be supported by a medical statement from a licensed physician or by a written statement from a licensed chiropractor stating, when possible, the anticipated duration of the convalescence period. Such employee agrees to submit to a further examination by a physician designated by the installation head if that official so requests.

Any full-time or part-time employee may request temporary light duty or other assignment, regardless of length of service. When doing so, the following requirements apply to an employee seeking temporary reassignment:

- The request must be submitted in writing to the installation head.
- The request must be supported by a medical statement from a licensed physician or by a written statement from a licensed chiropractor. When possible, the statement should include the anticipated duration of the convalescence period.
- The employee bears any cost connected with the statement required under this section.
- The employee may specifically seek light duty or may seek “other assignment” within the employee’s medical limitations.
- The employee must agree to submit to a further examination by a physician designated by the installation head, if requested.
- The Postal Service will be responsible for any costs incurred when management requests a second medical examination.

**Question:** Is there a specific form that an employee must use in submitting the physician’s medical statement or the chiropractor’s written statement?

**Answer:** There is no specific form for submission of the physician’s medical statement or chiropractor’s written statement. The information can be submitted on the physician’s letterhead.

Source: Step 4 Grievance H1C-1Q-C 14748, dated August 5, 1983.

## B Permanent Reassignment

B1 Any ill or injured full-time regular or part-time flexible employee having a minimum of five years of postal service, or any full-time regular or part-time flexible employee who sustained injury on duty, regardless of years of service, while performing the assigned duties can submit a voluntary request for permanent reassignment to light duty or other assignment to the installation head if the employee is permanently unable to perform all or part of the assigned duties. The request shall be accompanied by a medical certificate--from a physician designated by the installation head and made known to the Union and the employee--giving full evidence of the physical condition of the employee, the need for reassignment, and the

ability of the employee to perform other duties. A certificate from the employee's personal physician will not be acceptable.

The following requirements apply to an employee seeking permanent reassignment to a light duty or other assignment:

- An employee must have five years of postal service to be eligible to apply for permanent reassignment due to a non-job related injury or illness.
- Any full or part-time employee, regardless of length of postal service, may choose to request permanent reassignment if unable to perform all or part of his/her assigned duties due to job related illness or injury instead of using the procedures in the Employee and Labor Relations Manual, Subchapter 540.
- The request must be submitted in writing to the installation head.
- The request must be accompanied by a medical certificate from a physician designated by the installation head and made known to the Union and the employee. Unlike requests for temporary reassignment, a certificate from the employee's own physician is not acceptable.
- The Postal Service will be responsible for the costs of a medical examination required and scheduled by the Postal Service.

The employee may specifically seek light duty or may seek "other assignment" within his/her medical limitations.

B2 The following procedures are the exclusive procedures for resolving a disagreement between the employee's physician and the physician designated by the USPS concerning the medical condition of an employee who has requested a permanent light duty assignment. These procedures shall not apply to cases where the employee's medical condition arose out of an occupational illness or injury. On request of the Union, a third physician will be selected from a list of five Board Certified Specialists in the medical field for the condition in question, the list to be supplied by the local Medical Society. The physician will be selected by the alternate striking of names from the list by the Union and the Employer. The Employer will supply the selected physician with all relevant facts including job description and occupational physical requirements. The decision of the third physician will be final as to the employee's medical condition and occupational limitations, if any. Any other issues relating to the employee's entitlement to a light duty assignment shall be resolved through the grievance-arbitration procedure. The costs of the services of the third physician shall be shared by the Union and the Employer.

The dispute resolution procedure in this section does not apply to situations involving occupational, or on-the-job, illness or injury. Only OWCP has the authority to resolve disputes concerning the medical condition of employees who have suffered a compensable injury or illness.

If requested by the local union, a third doctor is selected from a list of certified specialists supplied, in each separate case, by the local Medical Society for the condition in question.

**The parties in 2012 settled a grievance involving two issues. The first issue was whether management violated the National Agreement when it sent a letter to an employee and/or the employee’s physician requesting clarification and/or information on an employee’s medical progress without sending a copy to the Office of Workers’ Compensation Programs (OWCP). The second issue was whether management violated the National Agreement when it created locally generated letters.**

**The parties agreed to settle both issues based on language from Handbook EL-505, Injury Compensation, dated December 1995, Section 6.3, Contacting the Treating Physician, which in part states:**

**When the USPS medical provider or OHNA is unable to do so, contact the treating physician if additional information is needed because of inconsistencies relative to the employee’s duty status or if there are incomplete medical reports. (ELM 545.62) The designated control point may contact the treating physician if clarification is needed following the initial examination.**

**Send copies of such correspondence to the employee and to the OWCP district office, and forward copies of the physician’s response to both, once it is received.**

**Source: Step 4 Grievance E98M-1E-C 02207779, dated June 28, 2012.**

C Installation heads shall show the greatest consideration for full-time regular or part-time flexible employees requiring light duty or other assignments, giving each request careful attention, and reassign such employees to the extent possible in the employee's office. When a request is refused, the installation head shall notify the concerned employee in writing, stating the reasons for the inability to reassign the employee.

This language requires that the installation head make a bona fide effort to identify light duty or other assignments. It further requires management to give the matter “the greatest consideration” and “careful attention,” and to reassign such employees to the extent possible in the employee’s office. If management

does not provide the requested light duty or other assignment, it has an obligation to explain in writing the reasons for the inability to reassign the employee. Disputes concerning the failure to provide light duty or other assignment may be addressed through the grievance-arbitration procedure.

### **Section 13.3 Local Implementation**

Due to varied size installations and conditions within installations, the following important items having a direct bearing on these reassignment procedures (establishment of light duty assignments) should be determined by local negotiations.

- A Through local negotiations, each office will establish the assignments that are to be considered light duty within the office. These negotiations should explore ways and means to make adjustments in normal assignments, to convert them to light duty assignments without seriously affecting the production of the assignment.
- B Light duty assignments may be established from part-time hours, to consist of 8 hours or less in a service day and 40 hours or less in a service week. The establishment of such assignment does not guarantee any hours to a part-time flexible employee.
- C Number of Light Duty Assignments. The number of assignments within the craft that may be reserved for temporary or permanent light duty assignments, consistent with good business practices, shall be determined by past experience as to the number of reassignments that can be expected during each year, and the method used in reserving these assignments to insure that no assigned full-time regular employee will be adversely affected, will be defined through local negotiations. The light duty employee's tour hours, work location and basic work week shall be those of the light duty assignment and the needs of the service, whether or not the same as for the employee's previous duty assignment.

Local Implementation: Section 13.3, together with Article 30, (Section 30.2) Items M, N and O, provides that the parties may discuss the following issues during the local implementation period:

- The number of light duty assignments to be reserved for temporary or permanent light duty assignment (Article 30, Section 30.2, Item M).
- The method to be used in reserving light duty assignments so that no regularly assigned member of the regular work force will be adversely affected (Article 30, Section 30.2, Item N).

- The identification of assignments that are to be considered light duty (Article 30, Section 30.2, Item O).

A local policy specifically stating that “temporary light or limited duty assignments will be authorized . . . for a period not to exceed 6 months,” with a possible extension of one to three months with medical certification, violated the National Agreement. Any absolute language that limits the amount of time a light or limited duty assignment will be authorized, without qualification, is improper.

Source: Step 4 Grievances H1N-2D-C 5870 and 6298, dated September 30, 1983.

The parties have agreed that, through local negotiations, light duty assignments may be established by adjusting normal assignments without seriously affecting the production of the assignment, as per Section 13.3A, or light duty assignments may be established from part-time hours, to consist of eight hours or less in a service day and 40 hours or less in a service week, as provided in Section 13.3B.

In any case, the light duty employee’s tour hours, work location and basic work week shall be those of the light duty assignment and the needs of the service, whether or not the same as the employee’s previous duty assignment, as provided in Section 13.3C.

Source: Step 4 Grievance H8C-4F-C 20495, dated April 29, 1982.

Section 13.3C provides that the installation head may make changes in an employee’s regular schedule and work location in order to accommodate a light duty request without incurring an overtime or out-of-schedule premium obligation. However, if there is light duty on the employee’s tour, it should be made available.

Sources: Step 4 Grievances NC-S-5127, dated April 15, 1977, and H8C-2F-C 8635, dated April 24, 1981; ELM Chapter 4, Section 434.622.

**Question:** Do employees who are on light duty have a right to work their normal work schedule?

**Answer:** No. The availability of the light duty assignment will determine the schedule of the employee, irrespective of the previous duty assignment. Local management will make a reasonable effort to reassign the employee to available light duty in his/her own craft prior to scheduling the employee for light duty in another craft.

Source: Step 4 Grievance NC-W-8182, dated November 14, 1977.

When an employee on limited duty is assigned to a schedule other than the employee's normal schedule, the employee is not entitled to out-of-schedule premium pay. Parenthetically, the arbitrator specifically noted that this decision does not give management an "unbridled right" to make such an out-of-schedule assignment if a limited duty assignment could be offered during the employee's regular tour. While the NALC was the grieving union in this case, the NPMHU intervened pursuant to Article 15, and therefore this decision is binding on mail handlers.

Source: National Arbitration Award N8-NA-0003, Arbitrator H. Gamser, dated March 12, 1980.

Note, however, that the considerations listed in ELM 546.142, outlined at the end of this chapter, must be made in assigning limited duty to employees who are injured on duty.

Requiring an employee to report for a light duty assignment that he/she has not requested is inappropriate. As the employee in question was directed to work a schedule different from his normal schedule, and as such assignment was not for the employee's personal convenience and was not sanctioned by the union, the employee was entitled to receive out-of-schedule premium pay for the period he worked in other than his normal work schedule.

Source: Step 4 Grievance N8-W-0096/W8N-5G-C 4396, dated November 26, 1979.

**Question:** Can light or limited duty employees be scheduled for holiday work?

**Answer:** Light or limited duty employees can be scheduled for holiday work provided the work to be performed fits within their medical restrictions.

Source: Step 4 Grievances H1C-4F-C 2041, dated April 30, 1982, and H1C-4F-C 2430/2437, dated September 21, 1982.

### **Section 13.4 General Policy Procedures**

A Every effort shall be made to reassign the concerned employee within the employee's present craft or occupational group, even if such assignment reduces the number of hours of work for the supplemental work force. After all efforts are exhausted in this area, consideration will be given to reassignment to another craft or occupational group within the same installation.

When possible, bargaining unit employees should be provided light duty work within the employee's craft. This section obligates management to reduce casual hours, if necessary, in order to provide light duty work in the employee's craft.

The parties have agreed that, in accordance with Section 13.4A, every effort shall be made to assign light duty employees within their present craft or occupational group. After all such efforts are exhausted, consideration will be given to reassignment to other crafts or occupational groups in the same installation.

Source: Step 4 Grievance H7M-1A-C 31598, dated August 13, 1991.

The parties have further agreed that management must give consideration to reassignment to another craft or occupational group within the same installation when considering a light duty request, provided that the pre-existing conditions of Article 13 are met.

Source: Step 4 Grievance H7M-4K-C 13203, dated January 2, 1990.

- B The full-time regular or part-time flexible employee must be able to meet the qualifications of the position to which the employee is reassigned on a permanent basis. On temporary reassignment, qualifications can be modified provided excessive hours are not used in the operation.
- C The reassignment of a full-time regular or part-time flexible employee to a temporary or permanent light duty or other assignment shall not be made to the detriment of any full-time regular on a scheduled assignment or give a reassigned part-time flexible preference over other part-time flexible employees.
- D The reassignment of a full-time regular or part-time flexible employee under the provisions of this Article to an agreed-upon light duty temporary or permanent or other assignment within the office, such as type of assignment, area of assignment, hours of duty, etc., will be the decision of the installation head who will be guided by the examining physician's report, employee's ability to reach the place of employment and ability to perform the duties involved.
- E An additional full-time regular position can be authorized within the craft or occupational group to which the employee is being reassigned, if the additional position can be established out of the part-time hours being used in that operation without increasing the overall hour usage. If this cannot be accomplished, then consideration will be given to reassignment to an existing vacancy.
- F The installation head shall review each light duty reassignment at least once each year, or at any time the installation head has reason to believe the incumbent is able to perform satisfactorily in other than the light duty assignment the employee occupies. This review is to determine the need

for continuation of the employee in the light duty assignment. Such employee may be requested to submit to a medical review by a physician designated by the installation head if the installation head believes such examination to be necessary.

A local practice of requiring an automatic update of medical information every 30 days is contrary to the intent of Article 13 and should be discontinued. Consistent with the provisions of Section 13.4F, an installation head shall review each light duty assignment at least once each year or at any time that the installation head has reason to believe that the employee is able to perform satisfactorily in other than the light duty assignment the employee occupies. Such employee may be requested to submit to a medical review by a physician designated by the installation head if the installation head believes such examination to be necessary.

Source: Pre-arbitration Settlement H90N-4H-C 96029235, dated April 9, 2001.

**G** The following procedures are the exclusive procedures for resolving a disagreement between the employee's physician and the physician designated by the USPS concerning the medical condition of an employee who is on a light duty assignment. These procedures shall not apply to cases where the employee's medical condition arose out of an occupational illness or injury. On request of the Union, a third physician will be selected from a list of five Board Certified Specialists in the medical field for the condition in question, the list to be supplied by the local Medical Society. The physician will be selected by the alternate striking of names from the list by the Union and the Employer. The Employer will supply the selected physician with all relevant facts including job descriptions and occupational physical requirements. The decision of the third physician will be final as to the employee's medical condition and occupational limitations, if any. Any other issues relating to the employee's entitlement to a light duty assignment shall be resolved through the grievance-arbitration procedure. The costs of the services of the third physician shall be shared by the Union and the Employer.

The dispute resolution procedure in this section does not apply to situations involving job-related illness or injury. Only OWCP has the authority to resolve disputes concerning the medical condition of employees who have suffered a compensable injury or illness.

The procedure in this section is the same as that in Section 13.2B2 of this Article. It provides that on request of the local union, a third doctor will be selected from a list of certified specialists supplied, in each separate case, by the local Medical Society for the condition in question.

H When a full-time regular employee in a temporary light duty assignment is declared recovered on medical review, the employee shall be returned to the employee's former duty assignment, if it has not been discontinued. If such former regular assignment has been discontinued, the employee becomes an unassigned full-time regular employee.

**Question:** Are employees who are injured off the job entitled to restoration to their former duty assignment?

**Answer:** Yes. In a National award, Arbitrator Mittenthal ruled that restoration rights under Section 13.4H apply to recovered injured employees regardless of whether the injury occurred on or off duty.

Source: National Arbitration Award H8N-5B-C 22251, Arbitrator R. Mittenthal, dated November 14, 1983.

I If a full-time regular employee is reassigned in another craft for permanent light duty and later is declared recovered, on medical review, the employee shall be returned to the first available full-time regular vacancy in complement in the employee's former craft. Pending return to such former craft, the employee shall be an unassigned full-time regular employee. The employee's seniority shall be restored to include service in the light duty assignment.

This provision is mandatory. The employee must be returned to the first available vacancy for which qualified in the employee's former craft.

Stated another way, an employee assigned to light duty in another craft pursuant to Article 13 who is declared recovered on medical review shall be returned to the first available full-time regular vacancy in complement in the employee's former craft.

Source: Step 4 Grievance H8C-1M-C 18735, dated April 22, 1981.

J When a full-time regular employee who has been awarded a permanent light duty assignment within the employee's own craft is declared recovered, on medical review, the employee shall become an unassigned full-time regular employee

K When a part-time flexible on temporary light duty is declared recovered, the employee's detail to light duty shall be terminated.

L When a part-time flexible who has been reassigned in another craft on permanent light duty is declared recovered, such assignment to light duty shall be terminated. Section 4I, above, does not apply even though the

employee has advanced to full-time regular while on light duty.

### **Section 13.5 Filling Vacancies Due to Reassignment of an Employee to Another Craft**

When it is necessary to permanently reassign an ill or injured full-time regular or part-time flexible employee who is unable to perform the regularly assigned duties, from one craft to another craft within the office, the following procedures will be followed:

- A When the reassigned employee is a full-time regular employee, the resulting full-time regular vacancy in the complement, not necessarily in the particular duty assignment of the losing craft from which the employee is being reassigned, shall be posted to give the senior of the full-time regular employees in the gaining craft the opportunity to be reassigned to the vacancy, if desired.

The seniority of full-time employees reassigned to another craft under the provisions of this section is determined by Section 13.6A.

- B If no full-time regular employee accepts the opportunity to be assigned to the vacancy in the complement, not necessarily in the particular duty assignment in the other craft, the senior of the part-time flexibles on the opposite roll who wishes to accept the vacancy shall be assigned to the full-time regular vacancy in the complement of the craft of the reassigned employee.

When no full-time regulars in the gaining craft desire to take the vacancy in the losing craft, the vacancy is then offered to part-time flexibles in the gaining craft by seniority. Part-time flexibles so reassigned become full-time regulars upon reassignment. However, under the provisions of Section 13.6B, they are required to begin a new period of seniority.

- C When the reassigned employee is a part-time flexible, the resulting vacancy in the losing craft shall be posted to give the senior of the full-time regular or part-time flexible employees in the gaining craft the opportunity to be assigned to the part-time flexible vacancy, if desired, to begin a new period of seniority at the foot of the part-time flexible roll.

Full-time regulars who successfully bid for a part-time flexible position in another craft pursuant to this provision must begin a new period of seniority and revert to part-time flexible status.

- D The rule in 5A and 5B, above, applies when a full-time regular employee on permanent light duty is declared recovered and is returned to the employee's former craft, to give the senior of the full-time regular or

part-time flexible employees in the gaining craft the opportunity, if desired, to be assigned in the resulting full-time regular vacancy in the complement, not necessarily in the particular duty assignment of the losing craft.

**Question:** Does management have the right to unilaterally terminate all light duty assignments?

**Answer:** Section 13.5 does not give management the right to unilaterally terminate all light duty assignments. Such termination is made on a case-by-case basis.

Source: Step 4 Grievance H1C-4A-C 35760, discussed March 27, 1985.

**National Arbitration Award issued by Arbitrator Das, addressed a long-standing dispute between the NPMHU and the Postal Service concerning work hour guarantees for employees on light duty under Article 13. He concluded, in relevant part, as follows:**

**[E]mployees are not guaranteed light duty assignments if they are unable to perform their regular job due to an off-duty injury or illness. But management is required to make every effort to seek work for such employees, and Article 13.3 provides for the establishment of light duty assignments through local negotiations.**

**It appears that often established light duty assignments given to full-time regular employees basically entail having the employee report to a designated work area on a particular tour -- much like a regular full-time duty assignment -- with the expectation that the employee (if physically capable) generally will be gainfully employed performing light duty work for a full eight-hour shift and 40-hour work week. The present dispute at its core is about the Postal Service's ability to send a light duty employee home before the end of an eight-hour tour (or to work the employee for less than five service days) due to lack of work.**

**[U]ltimately it is the language of Article 13 that controls. ELM 355.14 provides:**

**The light duty provisions of the various collective bargaining agreements between the U.S. Postal Service and the postal unions do not guarantee any employee who is on a light duty assignment any number of hours of work per day or per week.**

**The Union does not claim that Article 13, as such, guarantees an employee on a light duty assignment a certain number of hours of work per day or per week. Rather, as I understand its position, it**

**argues that Article 13 allows for, or does not prohibit, local parties' agreeing to provide such a guarantee in an LMOU, and if an LMOU does provide such a guarantee, it is enforceable. I am in agreement with the Mittenthal Award's reading of the language in Article 13, and conclude that Article 13.3.C, in particular, does not allow for local parties to establish light duty assignments that guarantee an employee a set number of hours per day or per week without regard to "the needs of the service." Article 13.3.C states:**

**The light duty employee's tour hours, work location and basic work week shall be those of the light duty assignment and the needs of the service whether or not the same as for the employee's previous duty assignment. (Emphasis added.)**

**Under this provision, "the needs of the service" not only are relevant in establishing the "light duty assignment" through local negotiations at the beginning of the contract period, but also in terms of the actual hours, work location and work week an employee is assigned while performing that assignment. That includes, as Arbitrator Mittenthal found in applying identical language in the USPS-APWU National Agreement, the right of the Postal Service to send the employee home when there is no work for him or her to perform on the light duty assignment, subject, of course, to management's obligation under Article 13.2.C and 13.4.A to make every effort to find work for the employee.**

**Source: National Arbitration Award Q87M-4Q-C 77008684, Arbitrator S. Das, November 26, 2013.**

### **Section 13.6 Seniority of an Employee Assigned to Another Craft**

**A Except as provided for in Section 4I, above, a full-time regular employee assigned to another craft or occupational group in the same or lower level in the same installation shall take the seniority for preferred tours and assignments, whichever is the lesser of (a) one day junior to the junior full-time regular employee in the craft or occupational group, (b) retain the seniority the employee had in the employee's former craft.**

The seniority of full-time regulars assigned to other crafts as a result of Article 13 is established as the lesser of the employee's own seniority or one day junior to the junior full-time employee in the craft to which assigned. This is an exception to the usual rule stated in Article 12.

**B A part-time flexible employee who is permanently assigned to a full-time regular or part-time flexible assignment in another craft, under the provisions**

of this Article, shall begin a new period of seniority. If assigned as a part-time flexible, it shall be at the foot of the part-time flexible roll.

### **Section 13.7 Notice**

Employees will be given at least 24 hours notice before appearance is required before an Accident Review Board. Union representation will be permitted at all discussions of accidents upon request of the employee, provided that the acquiring of such representation does not unreasonably delay the scheduled discussion.

This provision is meant to ensure that employees have ample notice before they may be required to appear before Accident Review Boards. Furthermore, union representation at all discussions of accidents is permitted, upon request of the employee, provided that requiring such representation does not unreasonably delay the scheduled meeting.

Source: Interest Arbitration Award, Arbitration David Goodman, dated January 18, 1982.

The following Memorandum of Understanding governs bidding by Mail Handlers on light or limited duty as reprinted below:

## **MEMORANDUM OF UNDERSTANDING**

### **LIGHT DUTY BIDDING**

It is agreed that the following procedures will be used in situations in which an employee covered by the Mail Handlers' National Agreement, as a result of illness or injury, is temporarily unable to work his or her normal assignment, and is working another assignment on a light duty or limited duty basis or is receiving Continuation of Pay (COP) or compensation as a result of being injured on the job, sick leave, or annual leave or Leave Without Pay (LWOP) in lieu of sick leave.

#### **I. Bidding**

A) An employee who is temporarily disabled will be allowed to bid for and be awarded a mail handler bid assignment in accordance with Article 12.3.E, or, where applicable, in accordance with the provisions of a local memorandum of understanding, provided that the employee will be able to assume the position within six (6) months from the time at which the bid is submitted.

B) Management may, at the time of submission of the bid or at any time thereafter, request that the employee provide medical certification indicating that

the employee will be able to perform the duties of the bid-for position within six (6) months of the bid. If the employee 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 employee shall not be eligible to re-bid the next posting of that assignment.

C) If at the end of the six (6) month period, the employee is still unable to perform the duties of the bid-for position, management may request that the employee provide new medical certification indicating that the employee will be able to perform the duties of the bid-for position within the second six (6) months after the bid. If the employee fails to provide such new certification, the bid shall be disallowed and the assignment shall be reposted for bidding. Under such circumstances, the employee shall not be eligible to rebid the next posting of that assignment.

D) If at the end of one (1) year from the submission of the bid the employee has not been able to perform the duties of the bid-for position, the employee must relinquish the assignment, and shall not be eligible to re-bid the next posting of that assignment.

E) It is still incumbent upon the employee to follow procedures in Article 12.3.C to request notices to be sent to a specific location when absent. All other provisions relevant to the bidding process will also apply.

## II. Higher Level Pay

Employees who bid to a higher level assignment pursuant to the procedures described in the preamble and Part I, Bidding, above, will not receive higher level pay until they are physically able to, and actually perform work in the bid-for higher level position.

**Question:** Can a full-time employee who is temporarily disabled bid for and be awarded a full-time duty assignment?

**Answer:** Yes. An employee who is temporarily disabled may bid for and be awarded a full-time duty assignment. If the employee is unable to immediately assume the duties of the assignment, management may require medical certification that indicates the employee will be physically able to perform the duties of the assignment within the six months from when the bid was submitted. If at the end of that six-month period, the employee is still physically unable to perform the duties of the assignment, new medical certification may be required that indicates the employee would be physically able to perform the duties of the assignment by the end of the next six-month period. If the employee fails to provide the required medical certification(s) when requested, the bid is disallowed and reposted; the employee in question cannot bid on the reposting.

If the employee is still physically unable to perform the duties of the assignment after one year, the bid is vacated and reposted pursuant to Article 12 and the Local Memorandum of Understanding, if applicable. The employee in these circumstances shall not be eligible to re-bid the next posting of the subject assignment.

An employee who bids for and is awarded a full-time duty assignment in accordance with this MOU is declared the successful bidder for that assignment and vacates his/her prior duty assignment.

**The issue(s) in these grievances are whether a light/limited duty employee can be assigned to a residual vacancy that he or she cannot physically perform.**

**After full discussion of this issue, we mutually agreed that no national interpretive issue is fairly presented in this case. The parties agree that an unassigned employee cannot be assigned to a residual vacancy unless the employee is able to perform the core functions of the position, with or without reasonable accommodations.**

**Source: Step 4 C00M-1C-C 05179842, C00M-1C-C 06002195, K00M-1K-C 050165441, dated December 18, 2011.**

## MEMORANDUM OF UNDERSTANDING

### RETURN TO DUTY

The parties affirm their understanding concerning the review of medical certificates submitted by employees who return to duty following extended absences due to illness.

We mutually agree to the following:

1. To avoid undue delay in returning an employee to duty, the on-duty medical officer, contract physician, or nurse should review and make a decision based upon the presented medical information the same day it is submitted.

Normally, the employee will be returned to work on his/her next scheduled tour of duty or the date stated in the medical documentation, provided that adequate medical documentation is submitted within sufficient time for review and that a decision is made to return the employee to duty.

2. The reasonableness of the Service in delaying an employee's return beyond his/her next scheduled tour of duty or the date stated in the medical documentation shall be a proper subject for the grievance procedure on a case-by-case basis.

This MOU provides guidelines for review of medical certification to assist in prompt return to duty of an employee who has been on extended absences due to illness, when it is determined that the employee will be returned to duty.

**The parties at the National Level have agreed as follows:**

**“The current ELM 865 language does not negate management’s obligation under the MOU on Return to Duty when returning an employee to duty after an absence for medical reasons.**

**“The reasonableness of the Service in delaying an employee’s return beyond his/her next scheduled tour of duty or the date stated in the medical documentation shall be a proper subject for the grievance procedure on a case-by-case basis.”**

**Source: Pre-arbitration Settlement Q00M-6Q-C 05099748 and Q06M-6Q-C 11100872, dated February 10, 2014.**

## **MEMORANDUM OF UNDERSTANDING**

### **CROSS CRAFT**

It is understood by the parties that in applying the provisions of Articles 7, 12 and 13 of this Agreement, cross craft assignments of employees, on both a temporary and permanent basis, shall continue as they were made among the six crafts under the 1978 National Agreement.

**Limited Duty:** Limited duty work is work provided for an employee who is temporarily or permanently incapable of performing his/her normal duties as a result of a compensable illness or injury. The term limited duty was established by Title 5, Code of Federal Regulations, Part 353, the O.P.M. regulation implementing 5 U.S.C. 8151(b), that portion of the Federal Employees’ Compensation Act (FECA) pertaining to the resumption of employment following compensable injury or illness. USPS procedures regarding limited duty are found in Part 540 of the Employee & Labor Relations Manual (ELM). The Office of Workers’ Compensation Programs has the exclusive authority to adjudicate compensation claims and to determine the medical suitability of proposed limited duty work.

ELM, Section 546.14, below, provides for additional rules that must be observed when offering limited duty work.

546.14 Disability Partially Overcome

### 546.142 **Obligation**

When an employee has partially overcome the injury of disability, the Postal Service has the following obligation:

a. *Current Employees.* When an employee has partially overcome a compensable disability, the Postal Service must make every effort toward assigning the employee to limited duty consistent with the employee's medically defined work limitation tolerance (see 546.611). In assigning such limited duty, the Postal Service should minimize any adverse or disruptive impact on the employee. The following considerations must be made in effecting such limited duty assignments:

(1) To the extent that there is adequate work available within the employee's work limitation tolerances, within the employee's craft, in the work facility to which the employee is regularly assigned, and during the hours when the employee regularly works, that work constitutes the limited duty to which the employee is assigned.

(2) If adequate duties are not available within the employee's work limitation tolerances in the craft and work facility to which the employee is regularly assigned within the employee's regular hours of duty, other work may be assigned within that facility.

(3) If adequate work is not available at the facility within the employee's regular hours of duty, work outside the employee's regular schedule may be assigned as limited duty. However, all reasonable efforts must be made to assign the employee to limited duty within the employee's craft and to keep the hours of limited duty as close as possible to the employee's regular schedule.

(4) An employee may be assigned limited duty outside of the work facility to which the employee is normally assigned only if there is not adequate work available within the employee's work limitation tolerances at the employee's facility. In such instances, every effort must be made to assign the employee to work within the employee's craft within the employee's regular schedule and as near as possible to the regular work facility to which the employee is normally assigned.

These provisions specify the steps that must be taken in seeking limited duty work in order to ensure the assignments are minimally disruptive to the ill or injured employees.

The provisions of ELM 546.14 are enforceable through the provisions of the grievance/arbitration procedure.

Source: Step 4 Grievances G90N-4G-C 95026885, et al., dated January 28, 1997.

**Question: May MHAs who have an on the job illness or injury be assigned to work in other crafts?**

**Answer: As is the case now, the assignment to another craft has to be consistent with Section 546 of the Employee and Labor Relations Manual and relevant Department of Labor regulations.**

## ARTICLE 14 SAFETY AND HEALTH

### Section 14.1 Responsibilities

It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force. The Union will cooperate with and assist management to live up to this responsibility. The Employer agrees to give appropriate consideration to human factors in the design and development of automated systems.

**Responsibilities:** It is management's responsibility to provide safe working conditions; it is the union's responsibility to cooperate with and assist management in its efforts to fulfill this responsibility. In addition, the Postal Service agrees to give appropriate consideration to human factors in the design and development of automated systems.

Employees have the right to become actively involved in the Postal Service's Safety and Health Program and to be provided a safe and healthful work environment. Employees also have the right to report unsafe and unhealthful working conditions. They may consult with management through appropriate employee representatives on safety and health matters, i.e., program effectiveness and participation in inspection activities where permissible. Employees have the right to participate in the safety and health program without fear of restraint, interference, coercion, discrimination, or reprisal.

Source: Employee and Labor Relations Manual (ELM) Chapter 8, Section 814.1

Employees have the responsibility to comply with all safety and health regulations, procedures, and practices, including the use of approved personal protective equipment. Employees also need to keep the work area in a safe and healthful condition through good housekeeping and proper maintenance of property and equipment and to immediately report safety hazards and unsafe working conditions. Employees have the responsibility to perform all duties in a safe manner. Employees should keep physically and mentally fit to meet the requirements of the job, and immediately report any accident or injury in which they are involved to their supervisors.

Source: ELM Chapter 8, Section 814.2.

**Question:** Can local management issue a local safety policy and conduct stand-up talks related thereto?

**Answer:** Management has the right to articulate guidelines to its employees regarding their responsibility concerning issues relating to safety. However, local accident policies, guidelines or procedures may not be inconsistent or in conflict

with the National Agreement. Any discipline imposed for cited safety rule violations must meet the “just cause” provisions of Article 16 and any administrative action related to safety violations must be consistent with Articles 14 and 29 of the National Agreement.

Source: Step 4 Grievance D94N-4D-C 97027016, et al., dated June 18, 1997.

**Question:** Can management involuntarily reassign an employee based upon his/her safety record?

**Answer:** Management may discuss an employee’s safety record with the employee and the employee can volunteer for reassignment, but management cannot force the move.

Source: Pre-arbitration Settlement H8N-4J-C 33933, dated December 6, 1982.

**Question:** Is there an automatic discipline policy for safety rule violations?

**Answer:** No. When safety rule violations occur, managers and supervisors have several alternative, corrective measures at their disposal. Although discipline is one such measure, they should use it only when other corrective measures do not appropriately fit the circumstances.

Correction of safety rule violations, whether by discipline or other alternatives, should not be predicated on whether an accident happened but rather on a factual determination that improper conduct occurred. Where discipline is the chosen alternative, the facts must support the requirements of just cause.

Source: Postal Bulletin 21723, page 8, dated May 4, 1989.

**Question:** Is there an automatic discipline policy for accidents?

**Answer:** No. There should be no automatic discipline for employees involved in accidents (motor vehicles or industrial). Disciplinary action must be appropriate to the safety rule violation, not dependent on whether an accident occurred.

Supervisors and managers also should understand that postal policy prohibits disciplinary action that may discourage accident reports or the filing of a claim for compensable injury with the Office of Workers’ Compensation Programs.

Source: Postal Bulletin 21603, page 3, January 22, 1987.

**Question:** When an employee is involved in an accident, is he/she required to complete the appropriate forms on the day the accident occurs?

**Answer:** An employee may be required to report the accident on the day it occurs, but completion of the appropriate forms will be in accordance with applicable rules and regulations and need not be on the day of the accident.

Source: Pre-arbitration Settlement H8C-5D-C 11000, dated November 20, 1981.

**Question:** May local management require an employee to sign a locally developed form which documents an unsafe practice?

**Answer:** No. Management may document unsafe practices. However, as there is no national requirement for employees to acknowledge that the unsafe practice was documented, employees should not be required to sign a local form for that purpose.

Source: Step 4 Grievance H1C-5D-C 30950, dated July 25, 1985.

## **Section 14.2 Cooperation**

A The Employer and the Union insist on the observance of safe rules and safe procedures by employees and insist on correction of unsafe conditions. Mechanization, vehicles and vehicle equipment and the work place must be maintained in a safe and sanitary condition, including adequate occupational health and environmental conditions. The Employer shall make available at each installation forms to be used by employees in reporting unsafe and unhealthful conditions. If an employee believes he/she is being required to work under unsafe conditions, such employees may: a) notify the employee's supervisor who will immediately investigate the condition and take corrective action if necessary; b) notify such employee's steward, if available, who may discuss the alleged unsafe condition with such employee's supervisor; c) file a grievance at Step 2 of the grievance procedure within fourteen (14) days of notifying such employee's supervisor if no corrective action is taken during the employee's tour; d) and/or make a written report to the Union representative from the local Safety and Health Committee who may discuss the report with such employee's supervisor.

Upon written request of the employee involved in an accident, a copy of the PS Form 1769 (Accident Report) will be provided.

Section 14.2 provides a special priority for the handling of safety and health issues, providing for cooperative correction of unsafe conditions and enforcement of safety issues as they arise.

In addition, Section 14.2 provides that safety and health grievances may be filed directly at Step 2 of the grievance procedure.

**Question:** May an employee file a grievance directly at Step 2 of the grievance procedure, without first notifying his/her supervisor of the unsafe condition?

**Answer:** No. Under Section 14.2, an employee needs to notify the supervisor prior to filing a grievance. If no corrective action is taken, a grievance may be filed within 14 days of notifying the supervisor, and that grievance may be filed directly at Step 2 of the grievance procedure.

**Question:** When an employee notifies his/her supervisor of unsafe conditions, what actions should the supervisor take?

**Answer:** Section 14.2 requires the supervisor to ensure that the conditions will be investigated immediately and corrective action will be taken, if necessary.

Source: Step 4 Grievance H8C-3W-C 29785, dated August 19, 1981.

**Question:** Is it a management responsibility to make PS Form 1767 available at each installation for reporting unsafe or unhealthy conditions?

**Answer:** Yes. A supply of PS Form 1767 must be readily available in the workplace so employees can, if they so desire, obtain them while maintaining their anonymity.

The parties have agreed that employees will not be required or permitted to push two hampers at a time with one hamper leading the other held by hand grasping the lead hamper and the trailing hamper to one side.

Source: Step 4 Grievance COM-1C-C 04148466, dated March 18, 2005.

B Any grievance which has as its subject a safety or health issue directly affecting an employee and which is subsequently properly appealed to arbitration in accordance with the provisions of Article 15 may be placed at the head of the appropriate arbitration docket.

### Section 14.3 Implementation

To assist in the positive implementation of the program:

A1 There shall be established at the Employer's Headquarters level, a Joint Labor-Management Safety Committee. Representation on the Committee, to be specifically determined by the parties, shall include representatives from the Union and representatives from appropriate Departments in the Postal Service. Not later than 60 days following the effective date of this Collective Bargaining Agreement, designated representatives of the Union and Management will meet for the purpose of developing a comprehensive agenda which will include all aspects of the Employer's Safety Program. Subsequent to the development of this agenda priorities will be established and a tentative schedule will be developed to insure full discussion of all topics. Meetings

may also be requested by either party for the specific purpose of discussing additional topics of interest within the scope of the Committee.

- A2 The responsibility of the Committee will be to evaluate and make recommendations on all aspects of the Employer's Safety Program, to include program adequacy, implementation at the local level, and studies being conducted for improving the work environment.
- A3 The Chairman will be designated by the Employer. The Union, in conjunction with the Chairman, shall schedule the meetings, and recommend priorities on new agenda items. The Employer shall furnish the Union information relating to injuries, illness and safety, including the morbidity and mortality experience of employees. This report shall be in the form of reports furnished OSHA on a quarterly basis.
- A4 The Headquarters level Committee will meet quarterly and the Employer and Union Representatives will exchange proposed agenda items two weeks before the scheduled meetings. If problems or items of a significant, National nature arise between scheduled quarterly meetings any party may request a special meeting of the Committee. Any party will have the right to be accompanied to any Committee meeting by no more than two technical advisors.
- A5 There shall be established at the Employer's Area level, a Regional/Area Joint Labor-Management Safety Committee, which will be scheduled to meet quarterly. The Employer and Union Representatives will exchange proposed agenda items two weeks before the scheduled meetings. If problems or items of a significant, Regional/Area-wide nature arise between scheduled quarterly meetings, any party may request a special meeting of the Committee. Any party will have the right to be accompanied to any committee meeting by no more than two technical advisors.
- A6 Representation on the Committee shall include representatives from the Union and appropriate representatives from the Postal Service Area Office. The Chairman will be designated by the Employer.

The provisions of Section 14.3A provide for National and Regional/Area Joint Labor-Management Safety Committees. The National Committee is responsible for evaluating and making recommendations on all aspects of the Employer's Safety Program, including program adequacy, implementation at the local level, and studies being conducted for improving the work environment.

- B The Employer will make Health Service available for the treatment of job related injury or illness where it determines they are needed. The Health Service will be available from any of the following sources: government or public medical sources within the area; independent or private medical facilities or services that can be contracted for; or in the event funds, spaces and personnel are available for such purposes, they may be staffed at the installation. The Employer will promulgate appropriate regulations which comply with applicable regulations of the Office of Workers Compensation Program, including employee choice of health services.
- C The Employer will comply with the Postal Employees Safety Enhancement Act of 1998.

The Postal Employees Safety Enhancement Act of 1998 became effective on September 29, 1998. This Act requires the Postal Service to adapt to the private sector rules and regulations issued by the U.S. Department of Labor, including the reporting system required of private-sector employers and the possibility of monetary fines for proven OSHA violations.

#### **Section 14.4 Local Safety Committee**

At each postal installation having 50 or more employees, a Joint Labor-Management Safety and Health Committee will be established. Similar committees may be established upon request of the installation head in installations having fewer than 50 employees, as appropriate. Where no Safety and Health Committee exists, safety and health items may be placed on the agenda and discussed at labor-management meetings. There shall be equal representation on the Committee between the participating unions and management. The representation on the Committee, to be specifically determined by the parties, shall include one person from each of the participating unions and appropriate management representatives. The Chairman will be designated by the Employer.

It is recognized that under some circumstances, the presence of an additional employee employed at the installation will be useful to the local Safety and Health Committee because of that employee's special expertise or experience with the agenda item being discussed. Under these circumstances, which will not normally be applicable to most agenda items, the employee may, at the request of the Union, be in attendance only for the time necessary to discuss that item. Payment for the actual time spent at such meetings by the employee will be at the applicable straight-time rate, providing the time spent is a part of the employee's regular workday.

This section requires the creation of joint local safety committees at each installation with 50 or more employees and encourages their creation at smaller

facilities. In small facilities without a committee, safety and health issues may be discussed in labor-management meetings.

**Question:** Is the number of members on the local joint labor-management safety and health committee discretionary?

**Answer:** No. The language of Section 14.4 is clear and does not allow for exceptions. There shall be equal representation between the union and management.

### **Section 14.5 Subjects for Discussion**

Individual grievances shall not be made the subject of discussion during Safety and Health Committee meetings.

In keeping with Section 14.5, individual safety-related grievances filed by mail handlers or the NPMHU may not be discussed during Joint Labor-Management Safety and Health Committee meetings. Under the 1998 APWU National Agreement, however, Article 14 (Section 14.5) provides that APWU individual grievances initiated in accordance with Article 14.2 of that agreement may be the subject of discussions at these meetings. Thus, NPMHU representatives on these committees can expect to be involved in meetings at which discussions of these grievances occur.

### **Section 14.6 Employee Participation**

It is the intent of this program to insure broad exposure to employees, to develop interest by active participation of employees, to insure new ideas being presented to the Committee and to make certain that employees in all areas of an installation have an opportunity to be represented. At the same time, it is recognized that for the program to be effective, it is desirable to provide for a continuity in the committee work from year to year. Therefore, except for the Chairman and Secretary, the Committee members shall serve three-year terms and shall at the discretion of the Union be eligible to succeed themselves.

The employee participation section allows, at the union's discretion, all union members of the safety and health committee to succeed themselves at the conclusion of each three-year term.

### **Section 14.7 Local Committee Meetings**

The Safety and Health Committee shall meet at least quarterly and at such other times as requested by a Committee member and approved by the Chairman in order to discuss significant problems or items. The meeting shall be on official time. Each Committee member shall submit agenda items to the Secretary at least three (3) days prior to the meeting. A member of the Medical/Health Unit

will be invited to participate in the meeting of the Labor-Management Safety and Health Committee when agenda item(s) relate to the activities of the Medical/Health Unit.

No request for a Safety and Health Committee meeting shall be unreasonably denied. If the local Union Safety and Health Committee member feels a request was unreasonably denied, the matter will be referred to the Union's Regional Office and the Employer's Area Office Safety Manager for a determination if the Safety and Health Committee should convene prior to the Quarterly meeting.

The local safety and health committee must meet at least quarterly, but may meet more often than that if it wishes, on official (paid) time. The parties agree that requests for meetings in addition to the mandated quarterly meetings shall not be unreasonably denied. If the union's representative on the Committee believes such a request has been unreasonably denied, the issue will be referred to the designated parties at the Area/Regional level to determine if the Committee should convene prior to the next quarterly meeting.

The local safety and health committee must meet at least quarterly, but may meet more often than that if it wishes, on official (paid) time.

**Question:** Is the union representative for the local safety and health committee compensated for time spent at a committee meeting?

**Answer:** Yes. The representative is to be compensated at the appropriate rate for the official time spent at the safety and health meeting.

Source: Step 4 Grievance H4M-1E-C 9794, dated March 4, 1986.

#### **Section 14.8 Local Committee Responsibilities**

A The Committee shall review the progress in accident prevention and health at the installation; determine program areas which should have increased emphasis; and it may investigate major accidents which result in disabling injuries. Items properly relating to employee safety and health shall be considered appropriate discussion items. Upon a timely request, information or records necessary for the local Safety and Health Committee to investigate real or potential safety and health issues will be made available to the Committee. In addition, the Committee shall promote the cause of Safety and Health in the installation by:

- A1 Reviewing Safety and Health suggestions, safety training records and reports of unsafe conditions or practices.
- A2 Reviewing local Safety and Health rules.

A3 Identifying unsafe work practices and assisting in enforcing work-related safety rules.

A4 Reviewing updated list of hazardous materials used in the installation.

B The Committee shall, at its discretion, render reports to the installation head and may at its discretion make recommendations to the installation head for action on matters concerning safety and health. The installation head shall within a reasonable period of time advise the Committee that the recommended action has been taken or advise the Headquarters Safety and Health Committee and the Presidents of the participating local unions as to why it has not. Any member of the Committee may also submit a written report to the Headquarters Safety and Health Committee in the event the Committee's recommendations are not implemented.

C Upon proper written request to the Chairman of the Committee, on-the-spot inspection of particular troublesome areas may be made by individual Committee members or a Subcommittee or the Committee as a whole. Such request shall not be unreasonably denied. When so approved, the Committee members shall be on official time while making such inspection.

D A Union representative from the local Safety and Health Committee may participate in the annual inspection, conducted by the Manager, Human Resources, in the main facility of each District and BMC, provided that the Union represents employees at the main facility of the District or BMC being inspected. In no case shall there be more than one (1) Union representative on such inspections.

E A Union representative from the local Safety and Health Committee may participate in other inspections of the main facility of each post office, District, BMC, or other installation with 100 or more man years of employment in the regular work force, and of an individual station or branch where the station or branch has 100 or more man years of employment in the regular work force, provided that the Union represents employees at the main facility or station or branch and provided that the Union representative is domiciled at the main facility or station or branch to be inspected.

If the Union representative to the local Safety and Health Committee is not domiciled at the main facility or station or branch to be inspected and if the Union represents employees at that main facility or station or branch, at the Union's option, a representative from the Committee may participate in the inspection (at no additional cost for the Employer) or the Union may designate a representative domiciled at the main facility, or station or branch to be inspected to participate in the inspection. In no case shall there be more than one (1) Union representative on such inspections.

- F One Union representative from the local Safety and Health Committee, selected on a rotational basis by the participating Unions, may participate in the annual inspection of each installation with less than 100 man years of employment in the regular work force, where such Committee exists in the installation being inspected. In those installations that do not have a Safety and Health Committee, the inspector shall afford the opportunity for a bargaining unit employee from that installation to accompany him during these inspections.
- G An appointed member of a local committee will receive an orientation by the Employer which will include:
  - G1 Responsibilities of the Committee and its members.
  - G2 Basic elements of the Safety and Health Program.
  - G3 Identification of hazards and unsafe practices.
  - G4 Explanation of reports and statistics reviewed and analyzed by the Committee.
- H Since it has been some time since some members of Safety Committees received orientation, all current members will receive an orientation not later than December 27, 2007.
- I Where an investigation board is appointed by an Vice President, Area Operations or a District Manager to investigate a fatal or serious industrial non-criminal accident and/or injury, the Union at the installation will be advised promptly. When requested by the Union, a representative from the local Safety and Health Committee will be permitted to accompany the board in its investigation.
- J In installations where employees represented by the Union accept, handle and/or transport hazardous materials, the Employer will establish a program of promoting safety awareness through communications and/or training, as appropriate. Elements of such a program would include, but not be limited to:
  - J1 Informational postings, pamphlets or articles in postal and Area publications.
  - J2 Distribution of Publication 52 to employees whose duties require acceptance of and handling hazardous items.

- J3 On-the-job training of employees whose duties require the handling and/or transportation of hazardous items. This training will include, but is not limited to, hazard identification; proper handling of hazardous materials; personal protective equipment availability and its use; cleanup and disposal requirements for hazardous materials.
- J4 All mailbags containing any hazardous materials, as defined in Publication 52, will be appropriately identified so that the employee handling the mail is aware that the mailbag contains one or more hazardous material packages.
- J5 Personal protective equipment will be made available to employees who are exposed to spills and breakage of hazardous materials.

**Question:** May the union participate in safety inspections?

**Answer:** The union may participate in safety inspections so long as the requirements set forth in Section 14.8 are met.

Source: Step 4 Grievance C8T-4F-C 13605, dated August 13, 1981.

### **Section 14.9 Field Federal Safety and Health Councils**

In those cities where Field Federal Safety and Health Councils exist, one representative of the Mail Handler Union who is on the Local Safety and Health Committee in an independent postal installation in that city and who serves as a member of such Councils, will be permitted to attend the meetings. Such employee will be excused from regularly assigned duties without loss of pay. Employer-authorized payment as outlined above will be granted at the applicable straight time rate, provided the time spent in such meetings is a part of the employee's regular work day.

(The preceding Article, Article 14, shall apply to Mail Handler Assistant employees.)

Following passage of the Postal Employment Safety Enhancement Act, the parties re-emphasized the importance of providing a safe and healthful workplace by agreeing to a new Memorandum of Understanding on the Correction of Unsafe Conditions. The procedures established in that MOU are not intended to change the provisions of Article 14, but rather are in addition to the contractual obligations of both parties. The MOU on the Correction of Unsafe Conditions is reprinted below:

### **MEMORANDUM OF UNDERSTANDING BETWEEN THE**

**UNITED STATES POSTAL SERVICE  
AND THE  
NATIONAL POSTAL MAIL HANDLERS UNION**

Re: Correction of Unsafe Conditions

The National Postal Mail Handlers Union (Mail Handlers) and the United States Postal Service (USPS) recognize the importance of providing a safe and healthful workplace for all postal employees. The parties acknowledge the passage of the Postal Employee Safety Enhancement Act (PESEA) passed by Congress on September 29, 1998 and in concert with the provisions of PESEA, the parties agree to implement its provisions in the Postal Service by taking the following actions:

1. The parties encourage the resolution of unsafe conditions at the lowest level in the organization. In accordance with our current procedures, an employee or a union representative may identify and discuss an alleged unsafe condition with their immediate supervisor, who will investigate and take corrective action if necessary and within their authority. If unresolved, the issue will be recorded including all relevant facts and referred to the parties designated representatives identified in Section 2 below.
2. The local parties will designate at all plant and distribution centers, plant and distribution facilities, bulk mail centers, airmail centers, air mail facilities, post offices, and stations and branches where five (5) or more mail handlers are employed, a facility union and management representative. These representatives will meet on a regular predetermined basis to review and attempt to resolve the referred safety and health issues.
  - A. The management and the union representatives should have sufficient authority and knowledge to resolve safety issues in an expeditious manner. As necessary, the parties will utilize available safety, maintenance, and other appropriate resources to develop possible resolutions.
  - B. To the extent issues are addressed on one tour in multi-tour facilities, the same issue will not be a topic for discussion on another tour as long as the issue is pending resolution with the parties' representatives.
  - C. Those offices that have an established program (e.g. Safety Captain) in which they regularly meet with union representatives to discuss safety concerns are not required to modify their existing program to conform to these procedures.

- D. Safety issues originating in all offices not identified in Section 2 above and unresolved in discussions between the union or employee and management representatives may be processed in accordance with the regular grievance procedure.
3. If possible, management will try to immediately resolve safety issues as they are brought to its attention in the meetings described above. The parties recognize, however, that certain safety issues cannot be resolved immediately. For instance, a safety issue brought to management's attention might have national impact implications or might require engineering changes which facility management is incapable of resolving at the level to which the initial complaint is brought, or may require the use of outside resources to resolve. There may be instances when it may not be possible to resolve the issue due to disagreement between the representatives over the nature of the safety issue itself, the necessary alternative resolutions, or the extent of work that needs to be performed to correct the situation. The parties' representatives may mutually agree to refer an unresolved issue to the local Safety and Health Committee. If appealed to the regularly scheduled local safety and health committee, the parties' representatives shall be prepared to present the issue to the committee with their assessment and resolution.
4. The parties agree that bargaining unit employees will utilize these procedures to notify management of workplace safety issues for resolution. To this end, the union at both the national and local level will notify bargaining unit employees both verbally and through their written communications vehicles to communicate any safety matters to its representatives so they can raise and resolve them, if possible, through this procedure.
5. This Understanding and its procedures are for the purpose of further providing a safe and healthy workplace through timely recognition and resolution of safety issues and is not intended to deprive any bargaining unit employee of his/her right to notify appropriate third parties. It is the intent of this agreement to implement this process to allow employees and the union to bring safety issues to management's attention so they can be expeditiously addressed in a timely manner without invoking an administrative procedure and attendant litigation which would have a delaying effect on any resolution to the safety issue.
6. The parties agree that any issues regarding nationally deployed equipment or issues that have national implication are to be jointly

forwarded by the local parties to the vice president, Labor Relations and manager, Contract Administration (Mail Handlers) for referral to the national Joint Labor-Management Safety Committee.

- 7 The parties will implement this process and name representatives to begin meeting within 60 days of the signing of this agreement. This agreement and its procedures are in addition to the contractual obligations of both parties and in no way changes or alters those provisions.

## **ARTICLE 15 GRIEVANCE-ARBITRATION PROCEDURE**

### **Section 15.1 Definition**

A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.

On the basis of this broad definition of a grievance, most work-related disputes may be pursued through the grievance-arbitration procedure. The language recognizes that most grievances will involve alleged violations of the National Agreement or of a Local Memorandum of Understanding.

Other types of disputes that may be handled within the grievance procedure may include:

- Alleged violations of postal handbooks or manuals (see Article 19);
- Alleged violations of other enforceable agreements between the parties, such as the Joint Statement on Violence and Behavior in the Workplace. In a National award, Arbitrator Snow found that the Joint Statement constitutes a contractually enforceable agreement between the parties and that the union has access to the grievance procedure to resolve disputes arising under the Joint Statement.

Source: National Arbitration Award Q90N-4F-C 94024977, Arbitrator C. Snow, dated August 16, 1996.

- Disputes concerning the rights of ill or injured employees, such as claims concerning fitness-for-duty exams, first aid treatment, compliance with the provisions of ELM Section 540 and other regulations concerning Office of Workers' Compensation Program (OWCP) claims. However, decisions of OWCP are not grievable matters, as OWCP has the exclusive authority to adjudicate compensation claims and to determine the medical suitability of proposed limited duty assignments.

Source: Step 4 Grievance G90N-4G-C 95026885, et al., dated January 28, 1997.

- Alleged violations of law (see Article 5);

- Other complaints relating to wages, hours or conditions of employment.

## Section 15.2 Grievance Procedure - Steps

Step 1: (a) Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause unless the parties agree in writing to extend the fourteen (14) day period. The employee, if he or she so desires, may be accompanied and represented by the employee's steward or a Union representative. The Union also may initiate a grievance at Step 1 within 14 days of the date the Union first became aware of (or reasonably should have become aware of) the facts giving rise to the grievance. In such case the participation of an individual grievant is not required.

A Step 1 Union grievance may involve a complaint affecting more than one employee in the office. Whenever the facts giving rise to a grievance relate to an incident/issue occurring or arising on a specific date and involve more than one employee in the office, a Step 1 or Step 2 grievance may only be initiated by the Union as a Union grievance on behalf of all involved employees within a specific work location in an installation as provided in Article 17.2A or as defined by local practice. Should any grievances concerning the same incident/issue be filed at Step 1 by individual employees, the Union will consolidate all such grievances and select a representative grievance which may be appealed to Step 2. Should multiple grievances concerning the same incident/issue be improperly filed/initiated at Step 1 by the Union, management shall notify the Union, and if so notified, the Union shall consolidate all such grievances and select a representative grievance which may be heard at Step 1.

The grievant or the union must discuss the grievance with the employee's immediate supervisor within fourteen (14) calendar days of when the grievant or the union first learned, or may reasonably have been expected to have learned, of its cause, **unless the parties have agreed in writing to extend that period.** For example, if a grievant receives a letter of warning, day 1 of the 14 days is the day after the letter of warning is received.

In a case involving designation of the "immediate supervisor" in a class action grievance, the parties agreed that determination of who is the immediate supervisor is a fact circumstance best suited for the local parties. In order to resolve grievances at the lowest possible step, as required by Section 15.3A, a Step 1 grievance should normally be initiated with the supervisor most likely responsible for the action giving rise to the dispute.

Source: Pre-arbitration Settlement I84M-4I-C 87040125, dated May 17, 1999

The immediate supervisor may be an acting supervisor (204-B).

Source: Step 4 Grievance H4N-5E-C 36561, dated February 26, 1988

A newly-hired career employee may file a grievance during his/her probationary period, unless the issue relates to an evaluation of work performance given to the employee during the probationary period or to the separation of the employee during the probationary period. See a further discussion of this subject under Article 12 (Section 12.1A).

A casual employee in the supplemental workforce who is working in the mail handler craft may not file a grievance under Article 15 of the National Agreement.

**Question: Can MHAs file grievances under Article 15 of the National Agreement?**

**Answer: Yes. MHAs have access to the grievance procedure for those provisions of the National Agreement that apply to MHAs.**

The union steward may, while interviewing the grievant or the potential grievant, complete his/her grievance outline worksheet. The union steward's time for this purpose would be covered under Article 17 (Section 17.3)

Source: Step 4 Grievance H1C-3P-C-6922, dated August 20, 1982

A grievance may be filed at Step 1 in a number of different ways:

- If the grievant files his/her own grievance at Step 1, the grievant may be accompanied and represented by a union representative.
- If the grievant files his/her own grievance at Step 1, even if the grievant chooses not to be accompanied or represented by the union during the discussion portion of the procedure at Step 1, management must give the steward or other union representative the opportunity to be present during any portion of the procedure which involves adjustment or settlement of the grievance. The union representative may waive the union's right in this regard. Furthermore, the union need not be present if the grievance is denied at Step 1.

Source: Step 4 Grievance H7M-4S-C 22798, dated February 15, 1993 (incorporating Pre-arbitration Settlement H7C-4J-C 18047, dated June 17, 1992.)

Whether or not present, the Union at the local level has a right to be notified of a settlement or adjustment which occurred at Step 1 of the grievance procedure.

Source: Step 4 Grievance H1N-5G-C 8564, dated August 12, 1983

- If the union initiates a grievance at Step 1 on behalf of an individual employee, that employee's participation in the Step 1 meeting is neither required nor prohibited.

Either party, i.e., the union or management, may have an observer at a grievance discussion. For example, management is permitted to have a supervisor serve as an observer at a grievance discussion between a steward and an acting supervisor (204-B). Normally, it is expected that the parties will advise each other in advance of any intent to have an observer.

Source: Pre-arbitration Settlement N1C-4B-C 1716, dated December 1, 1983

Management must discuss the grievance at Step 1 even if it contends that the complaint is not grievable or that the grievance is procedurally defective. Management may include its position on these matters as one of the reasons for denying the grievance.

Sources: Step 4 Grievance A8-W-0538, dated February 28, 1980 and Step 4 grievance H8C-3W-C 24461, dated April 23, 1981.

The intent of the parties is to resolve cases at the lowest possible level, whether it is done by telephone or in person. Normally, the parties will meet on Step 1 grievances in person; however, in unusual circumstances, or by mutual agreement of the local parties, to accommodate the process a Step 1 discussion may take place via telephone.

Sources: Pre-arbitration Settlement H4C-3W-C 27397, dated January 19, 1989, and Step 4 Grievance H7N-5K-C 4965, dated March 23, 1989.

Where the incident or issue which gives rise to the grievance occurs on a specific date and involves the complaint of more than one (1) employee, the union is required to file a single grievance at Step 1, or at Step 2 where appropriate, on behalf of all of the affected employees within a specific work location. For these purposes, work location is defined by Article 17.2A or local practice as the area of the installation to which a specific steward is assigned for purposes of providing representation. Where individual employees file their own grievances at Step 1 concerning the same incident/issue, the union is required to consolidate all such grievances and select one (1) representative grievance for appeal to Step 2. Furthermore, where the union itself improperly files multiple grievances on the same incident/issue at Step 1, management will notify the union of this fact and, if so notified, the union is required to consolidate all such grievances and select one (1) representative grievance for hearing at Step 1.

**(b) In any discussion at Step 1 the supervisor shall have authority to settle the**

grievance. The steward or other Union representative likewise shall have authority to settle or withdraw the grievance in whole or in part. No resolution reached as a result of such discussion shall be a precedent for any purpose.

The parties' representatives have the specific authority to resolve a grievance at this initial step of the grievance-arbitration procedure. Although either representative may consult with higher levels of authority within his/her respective organization regarding the issues in dispute, this section clearly states that the parties who handle the Step 1 discussion are empowered to settle the grievance. For example, where it can be demonstrated that management's representative lacked authority, i.e., someone else made the decision, discipline has sometimes been overturned by arbitrators.

(c) If no resolution is reached as a result of such discussion, the supervisor shall render a decision orally stating the reasons for the decision. The supervisor's decision should be stated during the discussion, if possible, but in no event shall it be given to the Union representative (or the grievant, if no Union representative was requested) later than five (5) days thereafter unless the parties agree to extend the five (5) day period. Within five (5) days after the supervisor's decision, the supervisor shall, at the request of the Union representative, initial the standard grievance form that is used at Step 2 confirming the date upon which the decision was rendered.

If the parties are unable to resolve the grievance at Step 1, the supervisor shall provide an oral decision, which will include the reasons for the denial. If the decision is not rendered during the Step 1 meeting, it must be provided within five (5) calendar days of that Step 1 meeting, unless the parties mutually agree to extend the time limits. If requested by the union, the supervisor shall, within five (5) days after issuance of the Step 1 decision, initial the Standard Grievance Form to confirm the date of the Step 1 decision.

(d) The Union shall be entitled to appeal an adverse decision to Step 2 of the grievance procedure within ten (10) days after receipt of the supervisor's decision. Such appeal shall be made by completing a standard grievance form developed by agreement of the parties, which shall include appropriate space for at least the following:

1. Detailed statement of facts;
2. Contentions of the grievant;
3. Particular contractual provisions involved; and
4. Remedy sought.

The parties at the national level shall agree upon a computer-generated version

of the standard grievance form that may be used to appeal an adverse decision to Step 2.

Time limits are calculated on the basis that day one (1) is the day following the receipt of the supervisor's oral decision. The union representative has until the tenth (10<sup>th</sup>) day to submit the appeal. If the appeal is being submitted through the mail, it must be postmarked no later than the tenth (10<sup>th</sup>) day following the Step 1 decision. It is recommended that union representatives not wait until the tenth (10<sup>th</sup>) day for this purpose.

Appeals to Step 2 must be made on the Standard Grievance Form. A computer-generated version of this form, agreed to by the parties at the National level, may be utilized.

Upon request, the Union is entitled to review the supervisor's Step 1 Grievance Summary Form, PS-2608 as follows. The PS Form 2608 is not completed by the Postal Service at the time of the Step 1 discussion, however, and therefore it is not available for the Union to review until Step 2. If at Step 2 or any subsequent step of the grievance procedure, the Union requests to review the completed PS Form 2608, it will be made available. A copy will be provided on request.

Source: Step 4 Grievance H1M-1J-C 10717, dated March 22, 1984.

Step 2: (a) The standard grievance form appealing to Step 2 shall be filed with the installation head or designee. In any associate post office of twenty (20) or less employees, the Employer shall designate an official outside of the installation as the Step 2 official, and shall so notify the Union Step 1 representative.

Management is responsible for notifying the union of the proper representative to whom Step 2 appeals are to be made. Office size is determined by adding together the number of career employees in the NPMHU, APWU and NALC bargaining units.

(b) Any grievance initiated at Step 2, pursuant to Article 2 of this Agreement, must be filed within fourteen (14) days of the date on which the Union or the employee first learned or may reasonably have been expected to have learned of its cause.

Where grievances are filed directly at Step 2, the same fourteen (14) day time limit applicable for grievances filed at Step 1 applies. Types of grievances that *may*, but are not required to, be filed directly at Step 2 are:

- Article 2, Non-Discrimination and Civil Rights. See Article 2 (Section 2.3.)

- Article 14, Safety and Health. See Article 14 (Section 14.2.)

(c) The installation head or designee will meet with the steward or a Union representative as expeditiously as possible, but no later than seven (7) days following receipt of the Step 2 appeal unless the parties agree upon a later date. In all grievances appealed from Step 1 or filed at Step 2, the grievant shall be represented in Step 2 for all purposes by a steward or a Union representative who shall have authority to settle or withdraw the grievance as a result of discussions or compromise in this Step. The installation head or designee in Step 2 also shall have authority to grant or settle the grievance in whole or in part.

The Step 2 meeting will be held within seven (7) days following management's receipt of the appeal, unless the parties mutually agree to extend the time limits. Note that the union represents an individual grievant for all purposes at Step 2 and thereafter. Again, both parties have full authority to resolve the grievance, and the union has full authority to withdraw the grievance, at Step 2.

The parties at the National level agree that management has an obligation to meet with the Union at Step 2 as long as the Union has met the procedures outlined in Section 15.2, Steps 1 and 2 of the National Agreement.

Source: Step 4 Grievance H4C-3W-C 14958, dated December 5, 1986.

The necessity of the presence of a grievant at a Step 2 meeting is determined by the Union.

Source: Step 4 Grievance H4C-5D-C 5830, dated December 3, 1985.

In a case dealing with the issue of the presence of the grievant at the Step 2 meeting, the parties agreed that all time spent in the Step 2 grievance meeting will be on a no gain/no loss basis in accordance with Article 17 (Section 17.4.) If the grievant is not available to attend the scheduled meeting and advance notice of that fact and a significant reason is provided by the union, the parties may mutually agree to extend the date of the Step 2 meeting.

Source: Pre-arbitration Settlement H4C-4B-C 2899, dated October 19, 1988.

The parties agreed that the National Agreement does not dictate the location where Step 2 meetings must be held.

Source: Pre-arbitration Settlement D84M-1D-C 87013561, dated June 15, 1998.

**The parties at the National level agree that the National Agreement does not dictate the location where Step 2 discussions must be held. This is a local dispute suitable for regional determination. Individual telephonic**

**Step 2 discussions are permitted only with agreement by both parties. These discussions and reviews will have the same contractual force and effect as if the parties had met in person.**

**Source: Step 4 Grievance G06M-1G-C 11029012, dated June 22, 2012.**

However, management is mandated along with the Union to have meaningful dialogue in order to resolve grievances. While complete privacy may be difficult to achieve, local management should make the effort to ensure that Step 2 meetings are as private as possible with no unnecessary interruptions.

Source: Step 4 Grievance H8C-5K-C-21811, dated January 12, 1982.

In a case involving more than one Management representative meeting with the Union at Step 2, the parties agreed that both the Union and Management have historically had persons other than the actual designated representatives attend Step 2 meetings as observers. However, such persons shall attend at the mutual consent of the parties designated to discuss the grievance. Payment is covered by the provisions of Article 17 (Section 17.4)

Source: Step 4 Grievance H8N-3U-C 16250, dated February 8, 1984.

(d) At the meeting the Union representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Article 31. The parties' representatives may mutually agree to jointly interview witnesses where desirable to assure full development of all facts and contentions. In addition, in cases involving discharge either party shall have the right to present no more than two witnesses. Such right shall not preclude the parties from jointly agreeing to interview additional witnesses as provided above.

Both parties are required to state in detail the facts and contractual provisions relied upon to support their respective positions and to exchange all relevant documents. The parties are expected to “cooperate fully” in the effort to develop all necessary facts and contentions.

Arbitrator Aaron stated that “all of the facts and arguments relied upon by both parties must be fully disclosed before the case is submitted to arbitration,” either at Step 2 or at a subsequent step of the grievance procedure. He held that the arbitral policy of refusal to accept new arguments at arbitration “should be strictly enforced.” He relied in part on an earlier award by Arbitrator Mittenenthal in which

that arbitrator stated that “Article XV describes in great detail what is expected of the parties in the grievance procedure” in relation to full disclosure prior to arbitration. Hence, it is in each party’s interest to ensure that all of the facts and arguments to be relied upon are fully disclosed at Step 2 of the grievance procedure.

Sources: National Arbitration Awards H8N-5B-C 17682, Arbitrator B. Aaron, dated April 12, 1983 and H8N-5L-C 10418, Arbitrator R. Mittenthal, dated September 21, 1981.

In non-discharge cases, the parties can mutually agree to jointly interview witnesses at the Step 2 meeting. In discharge cases, either party can present two (2) witnesses at the Step 2 meeting, and the parties can mutually agree to interview additional witnesses. All witnesses will be on the clock while traveling to and from the Step 2 meeting and while in attendance at the Step 2 meeting. Note that different rules apply to payment of the steward and the grievant. See further Article 17 (Section 17.4) for a full discussion of this issue.

(e) Where grievances appealed to Step 2 involve the same, or substantially similar issues or facts, one such grievance to be selected by the Union representative shall be designated the “representative” grievance. If not resolved at Step 2, the “representative” grievance may be appealed to Step 3 of the grievance procedure. All other grievances which have been mutually agreed to as involving the same, or substantially similar issues or facts as those involved in the “representative” grievance shall be held at Step 2 pending resolution of the “representative” grievance, provided they were timely filed at Step 1 and properly appealed to Step 2 in accordance with the grievance procedure.

(f) Following resolution of the “representative” grievance, the parties involved in that grievance shall meet at Step 2 within seven (7) days of their receipt of that resolution, unless the parties agree upon a later date, to identify the other pending grievances involving the same, or substantially similar issues or facts, and to apply the resolution to those grievances. Disputes over the applicability of the resolution of the “representative” grievance shall be resolved through the grievance-arbitration procedures contained in this Article; in the event it is decided that the resolution of the “representative” grievance is not applicable to a particular grievance, the merits of that grievance shall also be considered.

Where grievances appealed to this step involve the same, or substantially similar issues or facts, the union representative shall select one such grievance and designate it as the “representative” grievance. If resolution is not reached at Step 2, the “representative” grievance may be appealed through the grievance-arbitration procedure and all other such timely filed and timely appealed grievances will be held at Step 2 pending resolution of the “representative” grievance. Once the representative grievance is resolved, the parties at Step 2 meet to apply the resolution to the other grievances that were held at that step.

Where a dispute exists as to whether the resolution applies to a held grievance, the merits of that grievance will be considered at Step 2. If no agreement is reached, that grievance may then be appealed through the grievance-arbitration procedure.

(g) Any settlement or withdrawal of a grievance in Step 2 shall be in writing or shall be noted on the standard grievance form and shall be furnished to the Union representative within ten (10) days after the Step 2 meeting unless the parties agree to extend the ten (10) day period. Any such settlement or withdrawal shall not be a precedent for any purpose, unless the parties specifically so agree or develop an agreement to dispose of future similar or related problems.

Settlements and acknowledgments of the union's withdrawal of a grievance at Step 2 must be provided in writing or noted on the Standard Grievance Form within ten (10) days after the Step 2 meeting, unless the parties mutually agree to an extension. In an effort to encourage resolution, such settlements or withdrawals will not serve as precedent for any purpose unless the parties specifically agree otherwise

(h) Where agreement is not reached, the Employer's decision shall be furnished to the Union representative in writing within ten (10) days after the Step 2 meeting unless the parties agree to extend the ten (10) day period. The decision shall include a full statement of the Employer's understanding of (1) all relevant facts, (2) the contractual provisions involved, and (3) the detailed reasons for denial of the grievance.

(i) If the Union representative believes that the facts or contentions set forth in the decision are incomplete or inaccurate, such representative should, within ten (10) days of receipt of the Step 2 decision, transmit to the Employer's representative a written statement setting forth corrections or additions deemed necessary by the Union. Any such statement must be included in the file as part of the grievance record in the case. The filing of such corrections or additions shall not affect the time limits for appeal to Step 3.

Adverse Step 2 decisions must also be provided in writing within ten (10) days after the Step 2 meeting. The decision must include a full statement of management's understanding of all relevant facts and the contractual provisions involved and must provide detailed reasons for the denial.

Source: Step 4 Grievance H7M-3R-C 10666, dated October 20, 1988.

Where the union contends that the facts or contentions in the decision are incomplete or inaccurate, the union representative may submit written corrections and additions within ten (10) days of receipt of the decision. The steward is

entitled to time on-the-clock to prepare the union's statement of corrections and additions.

Source: Step 4 Grievance A8-S-0309, dated December 7, 1979.

**Whether additions and corrections can be submitted by anyone other than the union Step 2 representative is based on the fact circumstances involved. A Union representative may submit additions and corrections to a Step 2 decision. Whether the additions and corrections are accurate is subject to challenge, regarding accuracy, throughout the rest of the grievance arbitration procedure.**

**Source: Step 4 Grievance C06M-1C-C 12277784, dated June 27, 2014.**

Normally, management's Step 2 representative will not issue corrections and additions to the union. Should this occur, however, the appropriate union representative is entitled to reasonable time on-the-clock to prepare a written reply.

Source: Step 4 Grievance H8N-3W-C 33606, dated November 17, 1981.

Note that submission of corrections and additions does not alter the time limits for appeal to Step 3.

(j) The Union may appeal an adverse Step 2 decision to Step 3. Any such appeal must be made within fifteen (15) days after receipt of the Employer's decision unless the parties' representatives agree to extend the time for appeal. Any appeal must include copies of (1) the standard grievance form, (2) the Employer's written Step 2 decision, and, if filed (3) the Union corrections or additions to the Step 2 decision.

An appeal to Step 3 must be filed within 15 days of receipt of the Step 2 decision, and must include copies of the items listed in this subsection. Time spent in writing appeals to Step 3 is compensable under the provisions of Article 17 (Section 17.4.)

Source: National Arbitration Award AB-E-021/022, Arbitrator R. Mittenthal, dated December 10, 1979

**Step 3: (a) Any appeal from an adverse decision in Step 2 shall be in writing to the appropriate management official at the LR Service Center with a copy to the Employer's Step 2 representative, and shall specify the reasons for the appeal.**

The time limit for the union's appeal to Step 3 is fifteen (15) days after its receipt of the Step 2 decision, unless the parties mutually agree to an extension. All of the listed materials must be included in the appeal file. The address for the LR

Service Center, to which the Step 3 appeals must be made, is contained in the Memorandum of Understanding Re: Language Changes Due To Organizational Structure Changes, reprinted on page **185** of the **2016** National Agreement.

The union is required to provide a copy of the Step 3 appeal letter to management's Step 2 representative.

Source: Step 4 Grievance H7M-3R-C 10666, dated December 8, 1988.

Contractual language does not preclude the granting of extensions for appeal to Step 3, so long as the extensions are mutually agreed upon by either the Step 2 or Step 3 representatives.

Source: Step 4 Grievance H7M-4U-C 33358, dated September 23, 1991.

(b) The grievant shall be represented at Step 3 level by the Union's Regional representative, or designee. The Step 3 meeting of the parties' representatives to discuss the grievance shall be held at the respective Postal Service office (former regional headquarters) within fifteen (15) days after it has been appealed to Step 3. Step 3 discussions by telephone or video conferencing are permitted with the agreement of both parties' representatives. These discussions and reviews will have the same contractual force and effect as if the parties had met in person. Each party's representative shall be responsible for making certain that all relevant facts and contentions have been developed and considered. The Union representative shall have authority to settle or withdraw the grievance in whole or in part. The Employer's representative likewise shall have authority to grant the grievance in whole or in part. In any case where the parties' representatives mutually conclude that relevant facts or contentions were not developed adequately in Step 2, they shall have authority to jointly return the grievance to the Step 2 level for full development of all facts and further consideration at that level. In such event, the parties' representatives at Step 2 shall meet within seven (7) days after the grievance is returned to Step 2. Thereafter, the time limits and procedures applicable to Step 2 grievances shall apply.

The Step 3 meeting will be held within fifteen (15) days of management's receipt of the Step 3 appeal, unless both parties mutually agree to an extension of the time limits. The union is represented by its Regional representative, or designee. The meetings shall be held in the locations agreed to by the National or Regional/Area parties, as specified in the Memorandum of Understanding on page **185** of the **2016** National Agreement. Again, at Step 3, both parties have full authority to resolve the grievance, and the union has full authority to withdraw the grievance.

Both parties have an affirmative obligation to assure that all relevant facts and contentions have been included so that the grievance is fully developed at Step

3. They may, by mutual agreement, remand a case to Step 2 where they conclude that the parties at that step did not fully develop the case. If the case is remanded, the parties at Step 2 must meet within seven (7) days of receipt of the grievance; time limits and procedures for Step 2 grievances apply thereafter.

It is worth repeating Arbitrator Aaron's statement that "all of the facts and arguments relied upon by both parties must be fully disclosed before the case is submitted to arbitration . . ." He held that the arbitral policy of refusal to accept new arguments at arbitration "should be strictly enforced." Hence, it is in each party's interest to ensure that all of the facts and arguments to be relied upon are fully disclosed no later than Step 3 of the grievance procedure.

Source: National Arbitration Award H8N-5B-C 17682, Arbitrator B. Aaron, dated April 12, 1983.

Upon request, the Union is entitled to review PS Form 2609, Step 2 Grievance Summary, when it is utilized by Management's representative at Step 3 or above. Since the PS 2609 is not prepared until after the Step 2 meeting, this document cannot be supplied until the Step 3 meeting.

Source: Step 4 Grievance H1C-3U-C-6106, dated November 5, 1982.

(c) The Employer's written Step 3 decision on the grievance shall be provided to the Union's Step 3 representative within fifteen (15) days after the parties have met in Step 3, unless the parties agree to extend the fifteen (15) day period. Such decision shall state the reasons for the decision in detail and shall include a statement of any additional facts and contentions not previously set forth in the record of the grievance as appealed from Step 2. Such decision also shall state whether the Employer's Step 3 representative believes that no interpretive issue under this Agreement or some supplement thereto which may be of general application is involved in the case.

Management's decision must be provided to the union's Regional representative within fifteen (15) days, unless the parties mutually agree to an extension. The decision must include detailed reasons and must also include a statement of any additional facts and contentions that were not included in the record when appealed from Step 2. The decision must also indicate whether management's representative believes that no interpretive issue is involved in the case.

(d) The Union, at the Regional level, may appeal an adverse decision directly to arbitration at the Regional level within twenty-one (21) days after the receipt of the Employer's Step 3 decision in accordance with the procedure hereinafter set forth; provided the Employer's Step 3 decision states that no interpretive issue under this Agreement or some supplement thereto which may be of general application is involved in the case.

The union's Regional representative may appeal an adverse Step 3 decision directly to Regional level arbitration within twenty-one (21) days of receipt of the decision, so long as the decision indicates that no interpretive issue is involved in the case. The address for the LR Service Center to which appeals to Regional level arbitration must be submitted is contained in the Memorandum of Understanding Re: Language Changes Due to Organizational Structure Changes, reprinted on page 185 of the **2016** National Agreement.

**(e) A grievance alleging a violation of the District percentage limitation for Mail Handler Assistants may be initiated directly at Step 3 by the appropriate Regional Director within fourteen (14) days of the receipt of the accounting period reports from the Employer. These filings shall be made to LR Service, Attention: Step 3 Direct Appeals, U.S. Postal Service, P.O. Box 23788, Washington DC 20026-3788.**

(f) If either party's representative maintains that the grievance involves an interpretive issue under this Agreement, or some supplement thereto which may be of general application, the Union representative shall be entitled to appeal an adverse decision to Step 4 (National level) of the grievance procedure. Any such appeal must be made within twenty-one (21) days after receipt of the Employer's decision and include copies of the standard grievance form, the Step 2 and Step 3 decisions and, if filed, any Union corrections and additions filed at Steps 2 or 3. The Union shall furnish a copy of the Union appeal to the appropriate management official at the Grievance/Arbitration Processing Center.

The party whose representative maintains that the grievance involves an interpretive issue shall provide the other party a written notice specifying in detail the precise interpretive issue(s) to be decided. The Employer's notice shall be included in the Step 3 decision. The Union's written notice shall be automatically included as part of the grievance record in the case but the filing of such notice shall not affect the time limits for appeal

[See Memos, pages 181-182]

If the Union representative believes that the grievance involves an interpretive issue, the Union's Regional representative may appeal the case to Step 4 at the National level. Alternatively, the Union may appeal the case to regional arbitration.

Where Management's Step 3 decision indicates that an interpretive issue is involved in the grievance, the Union's Regional representative may only appeal the case to Step 4 at the National level.

**Article 15.2 Step 3(d) requires the party whose representative maintains that the grievance involves an interpretive issue shall provide the other**

**party a written notice specifying in detail the precise interpretive issue(s) to be decided.**

**Source: Step 4 Grievance K06M-1K-C 07261874, dated December 7, 2010.**

All such appeals must be made within twenty-one (21) days of receipt of the Step 3 decision.

This contractual language applies only to cases in which a question exists regarding interpretation of the Agreement or some supplement thereto which may be of general application. As Arbitrator Garrett stated, it is “not intended to provide a vehicle for considering a multitude of individual grievances as a sort of ‘class action.’”

Source: National Arbitration Award N8-NAT-2705, Arbitrator S. Garrett, dated July 30, 1975.

The union representative has the responsibility to provide a copy of the Step 4 appeal to the appropriate management official at the Grievance/Arbitration Processing Center. .

Source: National Arbitration Award N8-NA-0344, Arbitrator H. Gamser, dated July 10, 1981.

Step 4: (a) In any case properly appealed or referred to this Step the parties shall meet at the National level promptly, but in no event later than thirty (30) days after filing such appeal or referral in an attempt to resolve the grievance. The Union representative shall have authority to settle or withdraw the grievance in whole or in part. The Employer's representative shall have authority to grant or settle the grievance in whole or in part. The parties' Step 4 representatives may, by mutual agreement, return any grievance to Step 3 where (a) the parties agree that no national interpretive issue is fairly presented or (b) it appears that all relevant facts have not been developed adequately. In such event, the parties shall meet at Step 3 within fifteen (15) days after the grievance is returned to Step 3. Thereafter the procedures and time limits applicable to Step 3 grievances shall apply. Following their meeting in any case not returned to Step 3, a written decision by the Employer will be rendered within fifteen (15) days after the Step 4 meeting unless the parties agree to extend the fifteen (15) day period. The decision shall include an adequate explanation of the reasons therefor. In any instance where the parties have been unable to dispose of a grievance by settlement or withdrawal, the Union shall be entitled to appeal it to arbitration at the National level within thirty (30) days after receipt of the Employer's Step 4 decision.

[See Memo, page 181]

Step 4 is reserved for the appeal from Step 3 or the referral from Regional level arbitration of those cases which contain an interpretive issue under the National Agreement or some supplement thereto which is of general application. Where the parties at Step 4 determine that an interpretive issue does not actually exist in a grievance appealed to that Step, they may by mutual agreement return that grievance to Step 3. The parties at Step 3 must meet within fifteen (15) days after the grievance is returned to that step; thereafter, the time limits for handling Step 3 grievances will apply.

No re-appeal to Step 3 is necessary when a case is remanded from Step 4.

Source: Step 4 Grievance H1C-3A-C 46843, dated December 4, 1987.

### **Section 15.3 Grievance Procedure-General**

- A The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in settlement or withdrawal of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end. Every effort shall be made to ensure timely compliance and payment of monetary grievance settlements and arbitration awards. The Employer agrees that upon receipt of necessary paperwork, from the grievant and/or union, concerning a grievance settlement or arbitration award, monetary remuneration will be made. The necessary paperwork is the documents and statements specified in Subchapter 436.4 of the ELM. The Employer will provide the union copies of appropriate pay adjustment forms, including confirmation that such forms were submitted to the appropriate postal officials for compliance and that action has been taken to ensure that the affected employee(s) receives payment and/or other benefits. In the event that an employee is not paid within sixty (60) days after submission of all the necessary paperwork, such employee, upon request, will be granted authorization from management to receive a pay advance equal to seventy (70) percent of the payment owed the employee. In the event of a dispute between the parties concerning the correct amount to be paid, the advance required by this section will be the amount that is not in dispute.
- B The failure of the employee or the Union in Step 1, or the Union thereafter to meet the prescribed time limits of the Steps of this procedure, including arbitration, shall be considered as a waiver of the grievance. However, if the Employer fails to raise the issue of timeliness at Step 2, or at the step at which the employee or Union failed to meet the prescribed time limits, whichever is later, such objection to the processing of the grievance is waived.

If management fails to raise the issue of timeliness, in writing, at Step 2, or at the step at which the employee or Union failed to meet the prescribed time limits,

whichever is later, it waives the right to raise the issue at a later time. Management's obligations depend upon the step at which it asserts that the grievance was untimely.

Step 1: If management asserts that a grievance was untimely filed at Step 1, it must raise that objection in the written Step 2 decision (which is "later" than Step 1) or the objection is waived. Furthermore, even if the objection is raised at Step 1 for a grievance that was untimely at that step, it must also be raised at Step 2 and included in the written decision.

Step 2 or later: For grievances which management asserts were untimely at Step 2 or at a later step, they must raise the objection at the step at which the time limits were not met and include it in the written decision for that step and all subsequent steps. If the Postal Service fails to reassert its timeliness objections at subsequent steps, even if timeliness was raised at Step 2 or another prior step, the Postal Service waives its timeliness objection.

Source: National Arbitration Award H8T-5C-C 11160, Arbitrator B. Aaron, dated July 7, 1982.

The cancellation date on the envelope containing the appeal may be used to determine the timeliness of the appeal.

Source: National Arbitration Award N8-NA-0344, Arbitrator H. Gamser, dated July 10, 1981.

C Failure by the Employer to schedule a meeting or render a decision in any of the Steps of this procedure within the time herein provided (including mutually agreed to extension periods) shall be deemed to move the grievance to the next Step of the grievance-arbitration procedure.

In a 2009 award, National Arbitrator Eischen concluded that "a Step 2 decision issued by the Postal Service after [a] grievance [challenging a 14-day suspension] has been progressed properly to Step 3 in accordance with the 'deemed to move' provisions of Article 15.3.C, because of failure by the Employer to schedule a Step 2 meeting within the time provided in Article 15.2 Step 2 (c) (including mutually agreed to extension periods), has no validity, force or effect under the last sentence of ¶ 2 of Article 16.5 (formerly 16.4) of the USPS/NPMHU National Agreement" (emphasis in original).

Source: National Arbitration Award I94M-11-C 98072898, Arbitrator D. Eischen, dated Jan. 9, 2009.

D It is agreed that in the event of a dispute between the Union and the Employer as to the interpretation of this Agreement, such dispute may be initiated as a grievance at the Step 4 level by either party. Such a grievance

shall be initiated in writing and must specify in detail the facts giving rise to the dispute, the precise interpretive issues to be decided and the contention of the initiating party. Thereafter the parties shall meet in Step 4 within thirty (30) days in an effort to define the precise issues involved, develop all necessary facts, and reach agreement. Should they fail to agree, then, within fifteen (15) days of such meeting, each party shall provide the other with a statement in writing of its understanding of the issues involved, and the facts giving rise to such issues. In the event the parties have failed to reach agreement within sixty (60) days of the initiation of the grievance in Step 4, the Union then may appeal it to arbitration, within thirty (30) days thereafter.

This section authorizes either the union or management to file interpretive disputes directly at Step 4 at the National level and specifies the procedure to be used in handling such disputes. The grievance must be in writing and must specify in detail the precise interpretive issue(s) to be decided. In keeping with the last sentence of this section, and Section 15.4 below, only the union may appeal a dispute to National arbitration.

E The parties have agreed to jointly develop and implement a Contract Interpretation Manual (CIM) within six (6) months after the effective date of the 1998 National Agreement. The CIM will set forth the parties' mutual understanding regarding the proper interpretation and/or application of the provisions of this Agreement. It is not intended to add to, modify, or replace, in any respect, the language in the current Agreement; nor is it intended to modify in any way the rights, responsibilities, or benefits of the parties under the Agreement. However, production of the CIM demonstrates the mutual intent of the parties at the National level to encourage their representatives at all levels to reach resolution regarding issues about which the parties are in agreement and to encourage consistency in the application of the terms of the Agreement. For these reasons, the positions of the parties as set forth in the CIM shall be binding on the representatives of both parties in the resolution of disputes at the Local and Regional levels, and in the processing of grievances through Steps 1, 2 and 3 of the grievance-arbitration procedure. In addition, the positions of the parties as set forth in the CIM are binding on the arbitrator, in accordance with the provisions of Article 15.4A6, in any Regional level arbitration case in which the CIM is introduced. The CIM will be updated periodically to reflect any modifications to the parties' positions which may result from National level arbitration awards, Step 4 decisions, or other sources. The parties' representatives are encouraged to utilize the most recent version of the CIM at all times.

[See Memos and Letters, pages 179-186]

This language provides for the document that you are currently reading.

As noted in the Introduction and Preamble, the CIM sets forth the parties' mutual understanding regarding the proper interpretation and/or application of the provisions of the Agreement. The positions contained herein are binding on the parties' representatives in the handling of grievances at Steps 1, 2 and 3 of the grievance-arbitration procedure, on the parties' representatives at the local and Regional levels in the resolution of disputes, and on Regional level arbitrators.

## **Section 15.4 Arbitration**

### **A General Provisions**

- A1 A request for arbitration shall be submitted within the specified time limit for appeal.
- A2 No grievance may be arbitrated at the National level except when timely notice of appeal is given the Employer in writing by the Union. No grievance may be appealed to arbitration at the Regional level except when timely notice of appeal is given in writing to the appropriate management official at the LR Service Center by the certified representative of the Union in the particular Region. Such representative shall be certified to appeal grievances by the Union to the Employer at the National level.

Time limits for appeal to Regional-level arbitration are discussed under Section 15.2, Step 3(d). The union at the National level designates representatives who have the authority to appeal cases to Regional level arbitration.

- A3 All grievances appealed to arbitration will be placed on the appropriate pending arbitration list(s) in the order in which appealed. The Employer, in consultation with the Union, will be responsible for maintaining appropriate dockets of grievances, as appealed, and for administrative functions necessary to assure efficient scheduling and hearing of cases by arbitrators at all levels.
- A4 In order to avoid loss of available hearing time, except in National level cases, a sufficient number of back-up cases shall be scheduled in accordance with Article 15.4B2 to be heard in the event of late settlement or withdrawal of grievances before the hearing. In the event that the parties settle a case or either party withdraws a case five (5) or more days prior to the scheduled arbitration date, the backup cases on the appropriate arbitration list shall be scheduled. In the event that either party withdraws a case less than five (5) days prior to the scheduled arbitration date, and the parties are unable to agree on scheduling other cases on that date, the party withdrawing the case shall pay the full costs of the

arbitrator for that date. If the parties settle a case less than five (5) days prior to the scheduled arbitration date and are unable to agree to schedule other cases, the parties shall share the costs of the arbitrator for that date. This paragraph shall not apply to National level arbitration cases.

Management, in consultation with the union, is responsible for maintaining arbitration dockets. Cases are placed on those lists in their order of appeal.

The parties have placed a special emphasis on the need to avoid loss of arbitration dates. To assure that cases appealed to arbitration are heard as quickly as possible, back-up cases are to be scheduled for each hearing date. Additional language is found in Section 15.4B2c. Allocation of arbitrators' fees is specified for situations in which cases are settled or withdrawn less than five (5) days prior to the scheduled hearing date and a back-up case cannot be agreed upon.

The parties have agreed that neither party has the right to unilaterally cancel an arbitration hearing once it has been scheduled pursuant to Section 15.4. If either party maintains that unforeseen circumstances prevent them from presenting their case, they may appear before the arbitrator to request a continuance and the arbitrator shall have the authority to grant or deny the request on its merits. If the continuance is granted, the requesting party shall be responsible for all costs of the arbitrator for that date.

Source: Step 4 Grievance C98M-1C-C 01146875, dated February 25, 2003.

A5 Arbitration hearings normally will be held during working hours where practical. Employees whose attendance as witnesses is required at hearings during their regular working hours shall be on Employer time when appearing at the hearing, provided the time spent as a witness is part of the employee's regular working hours. Absent a more permissive local past practice and at no cost to the Employer, the Employer will permit one (1) change of work schedule per case scheduled for arbitration for either the grievant or a witness, provided notice is given to his or her immediate supervisor at least two (2) days prior to the scheduled arbitration hearing.

Union witnesses are considered to be on-the-clock when appearing at an arbitration hearing during their regular work hours, including reasonable waiting time. Arbitrator Mittenthal defined "reasonable" for this purpose as follows:

If his knowledge of the case is vital and the Union advocate needs him by his side, surely his presence is "required." He would be entitled to pay for all waiting time. But if he is called to corroborate what others will be

testifying to and he is merely an observer, his early presence is hardly “required.” He would not be entitled to pay for all waiting time.

However, union witnesses are not compensated for time spent traveling to and from the arbitration hearing.

Source: National Arbitration Award H1N-NA-C-7, Arbitrator R. Mittenthal, dated February 15, 1985.

At no cost to the Employer, one (1) change of schedule per case will be granted to either the grievant or a witness, so long as notice is provided to the employee’s immediate supervisor at least two (2) days prior to the scheduled hearing, unless there is a more permissive local past practice, in which case that practice will prevail.

The payment provisions do not apply to an employee who appears at a hearing as an “observer,” who cannot provide information which has substantive or probative value; witnesses must be knowledgeable about the issues in question.

Source: Step 4 Grievance NC-N-2064, dated September 20, 1976.

A6 All decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator. Unless otherwise provided in this Article, all costs, fees and expenses charged by an arbitrator will be shared equally by the parties.

Arbitration is the last step of the grievance-arbitration procedure. There are no further contractual avenues for management or the union to challenge or appeal an arbitration award. This exclusion of further contractual avenues includes appeals to Step 4 of the grievance-arbitration procedure. However, judicial relief or enforcement of an arbitration award may be available.

Source: Step 4 Grievance A98M-1A-C 01219270, et al., dated June 3, 2004.

Sound labor relations policy and the arbitration processes established under Article 15 are best served by precluding requests for reconsideration of arbitration awards by either the Union or the Postal Service. No requests or motions for reconsideration of arbitration awards may be filed by the Union or the Postal Service. This does not preclude any right that any party may have to seek judicial review of an arbitrator’s award; nor does this preclude an arbitrator from correcting clerical mistakes or obvious errors of arithmetical computation.

Source: National Level Agreement dated October 3, 1975 (**cited in Step 4 Grievance E06M-4E-C 08288303 dated March 22, 2011**).

Arbitrators have the authority to fashion remedies in cases where the grievance is deemed to be arbitrable. Arbitrator Mittenthal ruled that “the remedy for an alleged violation is a facet of every grievance.”

Source: National Arbitration Award N8-NA-0141, Arbitrator R. Mittenthal, dated July 7, 1980.

A7 The parties agree that, upon receipt of the award, each arbitrator's fees and expenses shall be paid in a prompt and timely manner.

A8 All arbitrators on the District Regular Contract/Discipline Panels and the District Expedited Panels and on the National Panel shall serve for the term of this Agreement and shall continue to serve for six (6) months thereafter, unless the parties otherwise mutually agree.

[See Letter, page 186]

A9 Arbitrators on the National and on the District Regular Contract/Discipline and District Expedited Panels shall be selected by the method agreed upon by the parties at the National Level. The parties shall meet for this purpose within ninety (90) days after signing this Agreement. In the event the parties cannot agree on individuals to serve on these panels, or to fill any vacancies, selection shall be made by the alternate striking of names from the appropriate list.

[See Letter, page 189]

The appointment of arbitrators is administered by the parties at the National level. Their terms of appointment are established by contractual language, and the appointment terms may be altered by mutual agreement of the parties.

## B Regional Level Arbitration - Regular

B1 In each District three (3) separate dockets of cases to be heard in arbitration shall be maintained for the Union by the Employer at the Area level:

B1a one for all removal cases and cases involving suspensions for more than 30 days;

B1b one for all cases appealed or referred to Expedited Arbitration; and

B1c one for all other cases appealed to arbitration at the Regional Level.

In order to assure expeditious hearing of cases appealed to arbitration, the parties agreed to reconfigure the arbitration dockets on a District, rather than Area/Regional, basis. Three (3) separate dockets of cases are maintained in each District.

## B2 Regional Arbitration Scheduling

- B2a Except as otherwise provided in B2b hereunder, all cases will be scheduled from their respective dockets for each District on a first-in, first-out order based on appeal to arbitration date unless the Union and Employer otherwise agree at the Regional level.
- B2b Grievances involving letters of warning or suspensions that have been timely appealed or referred to Expedited or Regular arbitration, where such discipline is cited in a removal or suspension of more than thirty (30) days timely appealed to Regional arbitration, will be provided priority scheduling on the respective docket to assure that such grievances are heard prior to the grievance regarding the removal or suspension of more than thirty (30) days. In no case shall a grievance regarding the removal or suspension of more than 30 days be heard prior to adjudication of any time-appealed grievance involving discipline cited in the removal or suspension of more than 30 days. Grievances involving separate elements of discipline cited in a particular removal or suspension of more than 30 days will not be combined for hearing without the mutual consent of the parties.
- B2c The parties agree that all cases will be heard in arbitration within 120 days from the date of the grievance appeal to arbitration. If a grievance is not heard in arbitration within the 120 days, the grievance will be scheduled as the first primary case on the next available arbitration hearing date. If, one (1) year after the effective date of this Agreement, this hearing requirement is not complied with by a particular District Panel(s) for three (3) consecutive Accounting Periods, the parties will meet to jointly select a sufficient number of additional arbitrators for that panel(s) to ensure compliance with this hearing requirement. Such meetings and addition of arbitrators will continue, as jointly agreed to

by the parties, until the panel(s) is in compliance with the hearing requirement.

The date of appeal of the grievance to arbitration determines its placement on the particular District docket. Scheduling of cases from each of the three District dockets is accomplished on a first-in, first-out (FIFO) basis, unless the parties agree otherwise. One agreed-to exception is designed to assure that timely-filed grievances regarding past elements listed in removal notices are adjudicated before the hearing on the removal itself; the parties also agreed that grievances involving “live” past elements will be scheduled individually and not “batched” before an arbitrator to be heard on the same day without the parties’ mutual consent. In a further effort to expedite arbitration hearings, the parties have agreed that if the one hundred and twenty (120) day hearing requirement cannot be met on any panel one (1) year after the effective date of the Agreement, additional arbitrators will be selected for that panel until the requirement is met.

**B2d** The primary case(s) assigned for each arbitration date will be listed on the scheduling letter. Unless mutually agreed otherwise, a maximum of two (2) primary cases from the District Regular Contract and District Regular Discipline dockets and a minimum of six (6) cases from the District Expedited docket will be listed on the respective scheduling letters. In addition every open case from the particular post office where the primary case(s) are located will be scheduled in the event the primary case(s) are resolved or withdrawn; a listing of such cases will be attached to the scheduling letter. If multiple cases exist at the primary location, the cases will be heard in order of appeal date, unless otherwise mutually agreed by the parties. The primary cases will be backed up with three (3) additional cases from the same District and Union geographic area. It is understood that the parties will resolve or arbitrate the cases at this primary location prior to moving to the first back-up location. The parties agree that cases will be heard rather than lose a hearing date.

The primary case(s) and the back-up cases will appear in the scheduling letter to the arbitrator and the parties, which will be submitted no later than forty-five (45) days prior to the scheduled hearing date, unless the parties at the Area/Regional level agree otherwise in a specific instance.

**B2e** If all cases at the primary location are resolved or withdrawn, the first back-up case shall become the scheduled case. If the first back-up case is resolved or withdrawn, additional back-up cases will consist of any open cases (see Section

4B2a for priority scheduling) at the post office location where the first back-up case is scheduled. The scheduling of these cases at the first back-up location shall go in order of appeal date to arbitration unless otherwise agreed at the Area/Regional level. If all cases at the first back-up location are resolved or withdrawn, the second back-up case shall become the scheduled case. If that case is resolved or withdrawn, any open cases (see Section 4B2a for priority scheduling) at the second back-up location will be scheduled as above, first-in, first-out. If all cases at the second back-up location are resolved or withdrawn, the third back-up case shall become the scheduled case, and the same procedures shall apply for scheduling additional cases at that location.

- B2f In the event that all back-up locations are exhausted, the location will be determined by the order of appeal date of cases within the same District and Union geographic area and will continue until no arbitration appeals remain either in the original District or union geographic area.
- B2g If the procedures in B2c through B2e are exhausted, additional locations will be determined by the parties based upon mutual agreement at the Area/Regional level. If no agreement is reached, scheduling of cases will be based upon the order in which cases were appealed to Regional arbitration.
- B2h The appropriate management official at the LR Service Center will provide to the Union at the National level a list of the pending cases on each docket by District listed in order of first-in, first-out.
- B2i If more than one hearing on a particular date is scheduled for a particular union geographic area, the union at the Regional level may request, and the Employer will agree to a mutually acceptable scheduling adjustment to another union geographic area.

Section 15.4B2d-j provides the order of scheduling for cases from each of the District arbitration dockets. For each scheduled date, a maximum of two (2) primary cases from the District Regular Contract or the District Regular Discipline or a minimum of six (6) cases from the District Expedited dockets will be scheduled. In order to assure that the date is utilized, a list of all pending cases from the appropriate docket will be attached to the scheduling letter listing the primary cases for that date.

- B3 Only discipline cases involving suspensions of 30 days or less and those other disputes as may be mutually determined by the parties shall be appealed or referred to Expedited Arbitration in accordance with Section 4C hereof.
- B4 Cases appealed or referred to arbitration, which involve removals or suspensions for more than 30 days, shall be scheduled from the appropriate District Regular Discipline docket for hearing at the Regional Level at the earliest possible date in the order in which appealed by the Union or referred.
- B5 If a written request is submitted by either party at least thirty (30) days prior to the scheduled hearing date for a case(s) appealed to Regional arbitration, the parties will promptly (normally no later than ten (10) calendar days after the request is received by the other party) conduct pre-arbitration discussions regarding the specified case(s).

A pre-arbitration discussion will be conducted for any grievance for which the union submits a written request at least thirty (30) days prior to the scheduled hearing date.

- B6 If either party concludes that a case appealed or referred to Regional Arbitration involves an interpretative issue under the National Agreement or some supplement thereto which may be of general application, that party may withdraw the case from arbitration and refer the case to Step 4 of the grievance procedure. The party referring the case to Step 4 shall pay the full costs of the arbitrator for that date unless another scheduled case is heard on that date.

The party whose representative maintains that the grievance involves an interpretive issue shall provide the other party a written notice specifying in detail the precise interpretive issue(s) to be decided and that party's contention with regard to the issue. A copy of the notice will be provided to the designated management and union officials at the Area/Regional level.

The withdrawal from Regional level arbitration and referral of a grievance to Step 4 can take place at any time from the date of appeal to arbitration until the issuance of the arbitrator's decision. If the parties' representatives at Step 4 determine that no interpretive issue is present in the grievance, it will be rescheduled for arbitration in keeping with the Memorandum of Understanding, Step 4 Procedures, reprinted at the end of this article. The intent of this memorandum is to expedite the hearing process and to prevent the use of Section 15.4B6 as a means of shopping for a new arbitrator.

**When a union intervenes in an area level arbitration, it has the right to refer the case to Step 4 of the grievance procedure.**

**Source: National Arbitration Award Q94C-4Q-C 98062054, Arbitrator C. Snow, dated January 1, 2000.**

When complying with the Memorandum of Understanding on Step 4 Procedures, the case is returned directly to regional arbitration to be heard before the same arbitrator who was scheduled to hear the case at the time of the referral to Step 4. Additionally, if the hearing had opened, the case will be returned to the same stage of arbitration.

Sources: Step 4 Grievances A90M-1A-C 94023140/4A-C-93050831, dated November 12, 1998

The withdrawal of a grievance from Regional arbitration and the referral of that grievance to Step 4 are not required to be separate actions. Arbitrator Mittenthal ruled that “the act of referring the case to Step 4 necessarily included withdrawing the case from regional arbitration.”

Source: National Arbitration Award H8C-4C-C 12764, Arbitrator R. Mittenthal, dated January 18, 1983.

- B7 The arbitrators on each District Panel shall be scheduled to hear cases on a rotating system basis, unless otherwise agreed by the parties.
- B8 Normally, there will be no transcripts of arbitration hearings or filing of post-hearing briefs in cases heard in Regular Regional level 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. However, each party may file a written statement setting forth its understanding of the facts and issues and its argument at the beginning of the hearing and also shall be given an adequate opportunity to present argument at the conclusion of the hearing.

This provision prohibits either party to an arbitration hearing from seeking a transcript without notifying the other party in advance at the National level. In a National Award, Arbitrator Aaron concluded that this subsection does not preclude either party from ordering a verbatim transcript of a regular arbitration hearing at the regional level without the consent of the other party, so long as reasonable advance notice is provided.

Source: National Arbitration Award H1C-NA-C 52, Arbitrator B. Aaron, dated May 4, 1985.

**This provision gives each party the procedural right to file a post-hearing brief after properly notifying the other party and the arbitrator of its intent to do so. Source: National Arbitration Award H4C-3W-C 8590, Arbitrator C. Snow, dated March 31, 1993. To be proper, the NPMHU and the Postal Service agree that the notice must occur prior to the close of the hearing so that both parties are aware of the other party's decision on whether to exercise this right.**

A Regional arbitrator has the discretion to permit either party to make a tape recording of the hearing over the objection of the other party. In the instant case, the union sought to make a tape recording to assist in the preparation of its post-hearing brief.

Source: National Arbitration Award H1M-3D-C 42523, Arbitrator J. Harkless, dated May 22, 1986.

B9 The arbitrator in any given case should render an award therein within thirty (30) days of the close of the record in the case.

The parties enforce this provision through the terms of a contract signed by the arbitrator prior to placement on a panel, which provides for reduced fees to arbitrators if their awards are not timely rendered.

A regular regional arbitrator's award is binding only on the installation where the grievance arose and only to the extent that a subsequent grievance involves the same material facts. It may be cited outside the participating installation as persuasive authority only, not binding authority.

Sources: Step 4 Grievances H7M-3W-C 20857, dated January 31, 1990 and H7M-3W-C 19636, dated May 14, 1990

#### C Regional Level Arbitration Expedited

C1 The parties agree to continue the utilization of an expedited arbitration system for disciplinary cases of 30 days suspension or less which do not involve interpretation of this Agreement and for such other cases as the parties may mutually determine. This system may be utilized by agreement of the National Union and the Vice-President, Labor Relations, or designee. In any such case, the Federal Mediation and Conciliation Service or American Arbitration Association shall immediately notify the designated arbitrator. The designated arbitrator is that member of the District Expedited Panel who, pursuant to a rotation system, is scheduled

for the next arbitration hearing. Immediately upon such notification the designated arbitrator shall arrange a place and date for the hearing promptly but within a period of not more than ten (10) working days. If the designated arbitrator is not available to conduct a hearing within the ten (10) working days, the next panel member in rotation shall be notified until an available arbitrator is obtained.

C2 The parties agree that all cases will be heard in arbitration within 120 days from the date of the grievance appeal to arbitration. If a grievance is not heard in arbitration within the 120 days, the grievance will be scheduled as the first case to be heard on the next available arbitration date. If, one (1) year after the effective date of this Agreement, this hearing requirement is not complied with by a particular District Panel(s) for three (3) consecutive Accounting Periods, the parties will meet to jointly select a sufficient number of additional arbitrators for that panel(s) to ensure compliance with this hearing requirement. Such meetings and addition of arbitrators will continue, as jointly agreed to by the parties, until the panel(s) is in compliance with the hearing requirement.

C3 If either party concludes that the issues involved are of such complexity or significance as to warrant reference to the District Regular Contract/Discipline Arbitration Panel(s), that party shall notify the other party of such reference at least twenty-four (24) hours prior to the scheduled time for the expedited arbitration.

C4 The hearing shall be conducted in accordance with the following:

C4a the hearing shall be informal;

C4b no briefs shall be filed or transcripts made;

C4c there shall be no formal rules of evidence;

C4d the hearing shall normally be completed within one day;

C4e if the arbitrator or the parties mutually conclude at the hearing that the issues involved are of such complexity or significance as to warrant reference to the District Regular Contract/Discipline Arbitration Panel, the case shall be referred to that panel. If the arbitrator, or the parties mutually, refer the case to Regular Arbitration, the parties shall share the costs of the arbitrator for that expedited arbitration date; and

C4f the arbitrator may issue a bench decision at the hearing but in any event shall render a decision within forty-eight (48) hours after conclusion of the hearing. Such decision shall be based on the record before the arbitrator and may include a brief written explanation of the basis for such conclusion. These decisions will not be cited as a precedent. The arbitrator's decision shall be final and binding. An arbitrator who issues a bench decision shall furnish a written copy of the award to the parties within forty-eight (48) hours of the close of the hearing.

C5 No decision by a member of the District Expedited Panel in such a case shall be regarded as a precedent or be cited in any future proceeding, but otherwise will be a final and binding decision.

C6 The District Expedited Arbitration Panel shall be developed by the National parties, on a geographic area basis, with the aid of the American Arbitration Association and the Federal Mediation and Conciliation Service.

[See MOU, page 190]

An Expedited Arbitration docket is maintained for each District. Separate panels of expedited arbitrators are created for each grouping of Districts. The rules for conducting an expedited hearing are less formal than those for a grievance appealed to regular arbitration. Decisions must be rendered within a significantly shorter time frame than for regular arbitration. While expedited decisions cannot be regarded as a precedent or be cited in any other case, the decisions of expedited arbitrators are final and binding.

Types of grievances which are proper for appeal to expedited arbitration are listed in the Memorandum of Understanding, Expedited Arbitration, reprinted at the end of this article. If the arbitrator or the parties mutually conclude at the expedited hearing that the issues are sufficiently complex or significant to be referred to regular arbitration, the grievance will be so referred.

Section 15.4C3 specifically allows for either party to conclude that issues in an expedited case involving complexity or significance may warrant reference to regular arbitration. Pursuant to this subsection, either party may refer a case and notify the other party of such reference at least twenty-four hours prior to the scheduled time for the expedited arbitration.

Source: Step 4 Grievance G90M-1G-D 94057283, dated April 18, 1996.

## D National Level Arbitration

- D1 Only cases involving interpretive issues under this Agreement or supplements thereto of general application will be arbitrated at the National level.
- D2 A docket of cases appealed to arbitration at the National level shall be maintained for the Union. The arbitrators on the National Panel shall be scheduled to hear cases on a rotating system basis, unless otherwise agreed by the parties. Cases on the docket will be scheduled for arbitration in the order in which appealed, unless the Union and Employer otherwise agree, and with the exception of priority scheduling hereinafter defined. The parties agree that in each calendar year the Employer may, at its option, elect priority scheduling to the top of the arbitration docket, of up to two cases from the list of disputes it previously initiated pursuant to Article 15.3D, and the Union may, at its option, elect priority scheduling to the top of the arbitration docket, of up to two cases from all cases other than those initiated by the Employer pursuant to Article 15.3D.

National level arbitration is reserved for cases involving interpretive issues. Decisions of National level arbitrators are precedent-setting and binding on Regional level arbitrators.

With the new language in Section 15.3D that allows either party to initiate an interpretive dispute at the National level, the parties have agreed to a scheduling system applicable only to the National arbitration docket, allowing each party to elect priority scheduling of up to two cases each calendar year only from among those cases it initiated under Section 15.3D, and the Union selecting only from all cases other than those initiated by the Employer pursuant to Section 15.3D.

National level arbitration is reserved for cases involving interpretive issues. Decisions of National level arbitrators are precedent-setting and binding on Regional level arbitrators.

In a Letter of Intent reprinted after Article 39, the parties have agreed that the Postal Service will continue to send all National level arbitration scheduling letters and moving papers for all bargaining units to the NPMHU.

### **Section 15.5 Administration**

The parties recognize their continuing joint responsibility for efficient functioning of the grievance procedure and effective use of arbitration. The Employer will furnish to the Union a copy of a quarterly report containing the following information covering operation of the arbitration procedure at the National level, and for each District docket separately:

- A number of cases appealed to arbitration;
- B number of cases scheduled for hearing;
- C number of cases heard;
- D number of scheduled hearing dates, if any, which were not used;
- E the total number of cases pending but not scheduled at the end of the quarter.

(The preceding Article, Article 15, shall apply to Mail Handler Assistant employees.)

This section reiterates the joint responsibility of the parties for the efficient functioning of the grievance procedure and effective use of arbitration, to assure that cases are heard in their order of appeal and in the most timely manner possible. Neither party may make unilateral decisions concerning any aspect of the process. As noted above, the actual administration of the scheduling process, including any necessary correspondence concerning scheduling, is done by the Postal Service in accordance with mutually agreed upon procedures.

Note that while the Revised Grievance-Arbitration Procedure was discontinued in 2006 negotiations, grievances pending in former test sites as of the effective date of the 2006 National Agreement will continue to be adjudicated under the provisions of the REGAP guidelines.

## MEMORANDUM OF UNDERSTANDING

### ARTICLE 15 (MAP)

**The parties agree to continue piloting the Modified Arbitration Procedure (MAP). Locations for further implementation of the MAP will be subject to mutual agreement of the parties.**

**This Memorandum of Understanding shall be effective during the term of the 2016 National Agreement.**

**The previous MOU re Article 15 (MOD - 15) has been deleted from the 2016 National Agreement. Any grievances or arbitrations that may be pending under the Modified 15 procedure will be allowed to continue to resolution.**

**Question:** Can Mod-15 arbitration awards issued under a USPS/APWU Modified Article 15 program be introduced in arbitration by the union when it did not participate in the Mod-15 program?

**Answer:** The union is not barred by contract language, mutual past practice or USPS/APWU Memoranda of Understanding, from citing and proffering in arbitration proceedings under Article 15, not as precedent but for whatever persuasive value the arbitrator deems appropriate, arbitration decisions issued under the Modified Grievance Procedure of the USPS/APWU National Agreement by an arbitrator who was informed, at the time of his/her decision, that the award could be cited as binding precedent between the APWU and the USPS in the office from which the award arose. Discretion is vested in the individual arbitrator to accept or reject such “Mod-15” arbitration awards as the union may cite or proffer and, if accepted, to accord such awards whatever persuasive value the individual arbitrator deems appropriate.

Sources: National Arbitration Award B90M-1B-C 94024725/94021081, Arbitrator D. Eischen, dated September 25, 2003 and Step 4 Grievances B90M-1B-C 94024725/94021081, dated November 19, 2003.

### **LETTER OF INTENT**

#### **ARTICLE 15.2 STEP 3**

The Arbitration Panel orders the parties to establish a Step 3 Scheduling Task Force to determine the most efficient location in which Step 3 meetings are to be held.

### **MEMORANDUM OF UNDERSTANDING**

#### **STEP 4 PROCEDURES**

This memorandum represents the parties' agreement with regard to withdrawing a grievance from regional arbitration and referring it to Step 4 of the grievance procedure.

If a case is withdrawn from regional arbitration, referred to Step 4, and then remanded as non-interpretive, it will be returned directly to regional arbitration to be heard before the same arbitrator who was scheduled to hear the case at the time of the referral to Step 4. The case will be scheduled on that arbitrator's next available date (i.e., the next date for which cases have not already been scheduled.) Additionally, if the hearing had opened, the case will be returned to the same stage of arbitration. If the case had not previously been scheduled for an arbitration hearing, it will be given priority scheduling, such that the case will be heard in the same order which would have applied if the case had not been withdrawn and referred. In the event that the case would already have been

heard had it not been withdrawn and referred, then the case will be heard as the next case on the appropriate docket.

This Memorandum of Understanding determines the arbitration scheduling of grievances which had previously been appealed to Regional level arbitration and then withdrawn and referred to Step 4 and which were subsequently determined not to involve an interpretive issue. The language assures that adjudication of the grievances will not be unduly delayed by their withdrawal and referral. See discussion under Section 15.4B6 for further discussion of this memorandum.

## **MEMORANDUM OF UNDERSTANDING**

### **PRE-ARBITRATION DISCUSSIONS**

The Arbitration Panel directs the parties to discuss whether to make changes to the pre-arbitration discussion set forth in Article 15.4(B)(5). Such discussions shall include, but are not limited to, the consideration of the following issues:

1. The timing for any pre-arbitration discussions;
2. Whether cases should be placed on a scheduling letter before any such pre- arbitration discussion is held;
3. Procedures to address a refusal by any party to conduct a pre-arbitration discussion; and
4. The process for scheduling cases following the completion of the pre-arbitration discussion.

## **MEMORANDUM OF UNDERSTANDING**

The Arbitration Panel directs the parties to discuss the creation of a pilot program to address issues regarding the number of cases to be placed on a scheduling letter and the withdrawal, postponement, or referral of grievances that have been placed on a scheduling letter for arbitration. Such discussions shall include, but are not limited to, the consideration of the following issues:

1. The number of cases that shall be placed on a scheduling letter;
2. The terms of arbitrator contracts, including the appropriate timeframe in which cancellation fees are owed to the arbitrator; and
3. The circumstances under which one party or the other would be fully responsible for the payment of any cancellation fees.

## **MEMORANDUM OF UNDERSTANDING**

### **NATIONAL ADMINISTRATIVE COMMITTEE**

The U.S. Postal Service and the National Postal Mail Handlers Union, AFL-CIO, a Division of the Laborers' International Union of North America, agree to continue the National Administrative Committee (NAC) to help resolve technical and/or complex disputes that may arise during the course of their National Agreement and may not be amenable to the usual Grievance-Arbitration Procedures established by the National Agreement. The NAC will be used to resolve those disputes jointly identified by the parties without the need to file any grievances. A listing of subjects for consideration in the NAC will be updated by the parties at the national level within 60 days following the effective date of this Memorandum of Understanding. By mutual agreement, the parties at the national level may continue to add subjects to the original listing. The parties will meet within six (6) months of the effective date of this Memorandum of Understanding, as well as every six (6) months thereafter, or more frequently as the need arises, to review the activities of the NAC.

For each subject(s), the Employer and the Union will designate individuals at the national level who will be responsible for discussing and, where possible, for resolving any disputes concerning the referenced subject(s). When a specific subject is under consideration by the NAC, any grievance(s) concerning that identified subject will be removed from the Grievance/Arbitration Procedure and forwarded to the NAC. When a grievance(s) has been filed and the subject of that grievance subsequently comes under consideration by the NAC, such grievance(s) will be removed and forwarded to the NAC.

The national level designees will be responsible for meeting regularly to resolve pending disputes. No special forms, appeals or paper work will be necessary to present a dispute to the NAC. When the designees cannot agree upon a resolution, either party may declare an impasse. Each party will identify the issue in dispute in writing within 30 days after the declared impasse on the subject. The identified dispute will then be placed on the appropriate arbitration docket.

The parties will update specific instructions concerning the NAC within 60 days after the effective date of this Memorandum of Understanding.

This Memorandum of Understanding shall be effective during the term of the **2016** National Agreement.

The National Administrative Committee (NAC) is designed to assist in the timely resolution of grievances which involve technical and/or complex disputes which may not be suitable for handling in the grievance-arbitration procedure. Subjects proper for consideration by the NAC are jointly identified by the parties at the National level.

## **MEMORANDUM OF UNDERSTANDING**

### **INTERVENTION INITIATIVE**

The parties agree to establish at the National level an “Intervention Protocol” to facilitate resolution of contractually-based disputes at the local level which contribute to contentious labor-management relations. Interventions are intended to analyze the underlying causes of such ongoing contractual disputes and to reach resolution through cooperative efforts.

The parties agree that all efforts initiated under this agreement will be coordinated by the National parties and the respective local and/or Area/Regional management and union officials who are responsible for ensuring that such problems are properly resolved.

Either party at the local level may advance an individual request for intervention to their respective National representatives. An intervention will be initiated contingent upon mutual agreement between the National parties. It is agreed that the following rationale, while not intended to be all-inclusive, may be used to support a request for intervention:

- ongoing or repetitive labor-management problems related to the local parties’ inability to jointly settle or to identify the root cause of a contractually-based dispute(s);
- continued failure of either party to comply with the grievance-arbitration procedures of Article 15;
- excessive use of official time or excessive denial of official union time; and
- excessive cancellation of arbitration dates.

This Memorandum of Understanding shall be effective during the term of the **2016** National Agreement.

This Memorandum of Understanding provides for National level consideration of intervention in any site where either of the local parties determines that contractual disputes are contributing to poor labor-management relations. Intervention efforts will be designed to resolve the underlying causes of the disputes and to enable the local parties’ to deal effectively with each other.

## **MEMORANDUM OF UNDERSTANDING**

### **PROCESSING OF POST-SEPARATION AND POST-REMOVAL GRIEVANCES**

The parties agree that the processing and/or arbitration of a grievance is not barred by the separation of the grievant, whether such separation is by resignation, retirement or death.

Additionally, the processing and/or arbitration of a non-disciplinary grievance is not barred by the final disposition of the removal of the grievant, if that non-disciplinary grievance is not related to the removal action.

**(The preceding MOU, Processing of Post-Separation and Post-Removal Grievances, shall apply to Mail Handler Assistant employees.)**

This Memorandum of Understanding governs the processing of grievances after a grievant is separated from the Postal Service and the processing of non-disciplinary grievances not related to a removal action after final disposition of a grievant's removal.

## **MEMORANDUM OF UNDERSTANDING**

### **ARTICLE 15 BACK PAY AWARDS**

The parties agreed that every effort should be made to assure that grievance settlements involving monetary remedies, back pay awards and scheduled payments are not unreasonably delayed after the receipt of all information necessary for their processing, including information needed from the individual employee.

The parties agreed to meet during the first six (6) months of the term of the new Agreement in an effort to identify methods to avoid unnecessary delays in the processing of grievance settlements involving monetary remedies, back pay awards and scheduled payments. Management also committed to address any significant delays in such payments brought to its attention by the Union at the national level, including through the National Administrative Committee, and to provide the Union with a written response thereto.

Delays in the issuance of back pay awards are a concern to both parties. This is a proper subject for the National Administrative Committee.

## **MEMORANDUM OF UNDERSTANDING**

### **INTEREST ON BACK PAY**

Where an arbitration award specifies that an employee is entitled to back pay in a case involving disciplinary suspension or removal, the Employer shall pay

interest on such back pay at the Federal Judgment Rate. This shall apply to cases heard in arbitration after the effective date of the 1990 agreement.

**(The preceding MOU, Interest on Back Pay, shall apply to Mail Handler Assistant employees.)**

## **MEMORANDUM OF UNDERSTANDING**

### **LANGUAGE CHANGES DUE TO ORGANIZATIONAL STRUCTURE CHANGES**

Whenever the **2016** National Agreement calls for meetings at the Area level, including Step 3 grievance meetings under the grievance-arbitration procedure set forth in Article 15, such meetings will be held in the cities where the Postal Service's former Regional Headquarters were located prior to the Postal Service organizational structure change of 1992 -- i.e., Windsor, Connecticut; Philadelphia, Pennsylvania; Memphis, Tennessee; Chicago, Illinois; or San Bruno, California. These locations shall remain unchanged during the term of the **2016** National Agreement, unless the parties mutually agree otherwise.

In addition, whenever the **2016** National Agreement refers to "the appropriate management official at the LR Service Center," it means that a notice or other information that is to be provided to that management official should be sent to the LR Service Center. This reference also applies to the documents relating to the Modified Arbitration Procedure and Modified Article 15 procedures. The current address of the LR Service Center is:

National Service Center  
U.S. Postal Service  
P.O. Box 25398  
Tampa, FL 33622-5398

In addition, this letter is meant to confirm that, whenever language changes have been made in the **2016** National Agreement to reflect those changes made during the Postal Service's organizational structure change of 1992, the Postal Service's Area level shall serve as the counterpart to the Union's Regional level.

This MOU specifies the location for Step 3 meetings and the address for appeals to Step 3 and to Regional level arbitration.

## **LETTER OF INTENT**

## DISTRICT ARBITRATION PANELS

The parties agree that the arbitration panels referenced in Article 15.4 will be constituted on a District- or grouping of Districts-basis, as provided hereunder. Within each grouping, arbitrators may be appointed to the District Regular Contract/Discipline Panel, to the District Expedited Panel or to a combination of both. **In the event that a District is discontinued and/or combined with one or more other Districts, the arbitrators residing on panels for that District will be added to the panels of the gaining District(s) unless otherwise agreed to by the parties at the National level.**

EASTERN AREA	Appalachian Central PA <b>Ohio Valley</b> Kentuckiana Northern Ohio Philadelphia Metropolitan South Jersey Tennessee Western NY Western PA
CAPITAL METRO AREA	Atlanta Baltimore Northern Virginia Capital Richmond Greater South Carolina Mid-Carolinas Greensboro
GREAT LAKES AREA	Chicago Central Illinois Detroit Greater Michigan Greater Indiana Gateway Lakeland
NORTHEAST AREA	Albany Caribbean Connecticut Valley Greater Boston Long Island New York City Northern New England

	Northern New Jersey Triboro Westchester
PACIFIC AREA	Bay-Valley Honolulu Los Angeles Sacramento
	San Diego San Francisco Santa Ana Sierra Coastal
SOUTHERN AREA	Alabama Arkansas Dallas Ft. Worth Houston Louisiana Mississippi <b>Gulf Atlantic</b> Oklahoma Rio Grande South Florida Suncoast
WESTERN AREA	Alaska Arizona Central Plains Colorado-Wyoming Dakotas Hawkeye Mid-America Nevada-Sierra Northland Portland Salt Lake City Seattle

Three (3) dockets are established in each District for all grievances appealed to Regional level arbitration.

Additionally, two (2) separate panels of arbitrators are established in Districts or groupings of Districts to hear grievances on those dockets:

Arbitrators on the District Regular Contract/Discipline Panel will hear cases on the District Regular Contract Docket and the District Regular Discipline Docket;

Arbitrators on the District Expedited Panel will hear cases on the District Expedited Docket.

Individual arbitrators may be appointed to both panels.

The decision to establish the panels for a specific District or for a combination of Districts, as listed in the MOU, was made based on a series of factors, including the volume of cases pending in each District, geography, and the anticipated availability of arbitrators.

**The listing of District Arbitration Panels has been updated in the 2016 National Agreement. In addition, the new contractual language recognizes that, unless the National parties agree otherwise, if a District is discontinued and/or combined with one or more other Districts, the arbitrators residing on panels for that District will be added to the panels of the gaining District(s).**

## LETTER OF INTENT

### RE: EXPECTATIONS OF ARBITRATORS

The parties recognize and acknowledge the importance of bringing closure to workplace disputes between labor and management as expeditiously as possible. During discussions held regarding Article 15 of the National Agreement, the parties reaffirmed their commitment to ensure the efficiency of the grievance-arbitration procedure. The parties mutually identified the following expectations for Arbitrators serving during the term of the **2016** National Agreement to hear cases at the Area/Regional level:

In accordance with the terms, timelines and conditions articulated in the contract effectuating their appointment to the Joint USPS-NPMHU Arbitration Panel, Arbitrators should expect to:

- be scheduled for a minimum of six (6) hours of hearing time on each arbitration date.
- hear more than one (1) case on each arbitration date.
- hear cases in the order of their appearance on the scheduling letter, then move to other cases pending within the primary location, and finally, proceed to the appropriate back-up list if the initial docket is depleted prior

to hearing, unless a deviation from the first-in, first-out sequence has been agreed to by both advocates in accordance with the provisions articulated in Article 15. 4.

- produce clear arbitration awards, ensuring both brevity and ease of understanding, by limiting the recitation of contract language to only citations that are relevant to the fact-circumstances of the case, without reproduction of unnecessary and lengthy quotes from the USPS-NPMHU National Agreement or other USPS handbooks or manuals.
- ensure fairness to the parties, especially the grievant, by issuing punctual awards as soon as possible following the close of the hearing record.

In keeping with our joint responsibility to ensure the effective use of arbitration, it is the position of the parties that canceled or lost arbitration hearing dates should be a rare occurrence. The parties are to be diligent in exerting their best efforts to ensure that hearing dates are effectively utilized to the maximum extent possible.

This Letter of Intent is intended to clarify the parties' expectations for the conduct of arbitration hearings, including the duration of the hearing, the number and order of cases to be heard, and the content and timeliness of arbitration decisions. It is designed for either party to submit to the arbitrator at the hearing if any questions regarding the conduct of the hearing are raised by that arbitrator or the other party's advocate.

In order to maintain the integrity of the arbitral process, the parties and their agents, employees, and representatives should avoid even the appearance of impropriety when making contact with an arbitrator. The parties must maintain an arms length relationship with the arbitrator at all times. In this regard, 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.

Source: MOU between USPS and NPMHU, dated April 28, 1988.

## **MEMORANDUM OF UNDERSTANDING**

### **EXPEDITED ARBITRATION**

The U.S. Postal Service and the National Postal Mail Handlers Union, AFL-CIO, a Division of the Laborers' International Union of North America, agree to hear grievances concerning the following issues in the Expedited Arbitration forum.

1. Restricted Sick Leave;
2. Step Withholding;
3. Employee Requests for Leave;
4. AWOL;
5. Request for Medical Certification;
6. Supervisor performance of bargaining unit work in 1.6A offices;
7. Bypass of employee(s) on the Overtime Desired List;
8. Holiday scheduling;
9. Designation of successful bidder;
10. Movement outside of bid assignment area;
11. Higher level assignments;
12. Employee claims;
13. Any other grievance mutually agreed upon by the parties at Step 3.

This Agreement does not change either party's right to refer an expedited case to regular arbitration in accordance with the applicable procedures of Article 15, Section 4.C., of the National Agreement.

This Memorandum of Understanding relates to Section 15.4C. It allows for referral from expedited to regular arbitration where the arbitrator or the parties mutually agree that the grievance is of sufficient complexity or significance to warrant such referral; please refer to the discussion under Section 15.4C6 for further information regarding the procedures.

Dear Mr. Hegarty:

During negotiations over the terms of the 2006 National Agreement between the National Postal Mail Handlers Union and the U.S. Postal Service, the parties

reached the following understandings with regard to the changes made to Article 15.3D and Article 15.4D2.

1. Any dispute initiated by the Employer at the National level under Article 15.3D shall not include any issue that previously has been appealed by the Union to the National arbitration docket.
2. If the parties are unable to resolve a dispute initiated by the Employer at the National level under Article 15.3D, then the Union has the option to accept the Employer's position on that issue or appeal the issue to National arbitration within existing contractual time limits. The Employer has no right to appeal any dispute or issue to National arbitration.
3. If either the Employer or the Union, or both, do not opt to elect priority scheduling to the top of the National arbitration docket for up to two cases in any given calendar year, then those available arbitration hearing dates will revert to the dates subject to the preexisting scheduling standards – i.e., cases on the docket will be scheduled for arbitration in the order in which appealed, unless otherwise agreed to by the parties.
4. Cases on the National arbitration docket will be scheduled for arbitration with no less than one hundred and fifty (150) days notice to both parties measured from the date of scheduling to the date of the initial arbitration hearing, unless the parties mutually agree to expedite a particular hearing date.
5. Any local grievances filed on the specific interpretive issues pending on the National arbitration docket shall, upon mutual agreement, be held in abeyance at the appropriate level until a resolution of the national interpretive dispute. Said grievances should not be referred/appealed to Step 4 merely because the parties cannot agree on whether the specific interpretive issue is fairly presented in the local grievance.
6. Ordering of those cases elected for priority scheduling shall be accomplished in the following manner: during each calendar quarter, the first case to be heard of the possible four such cases will be that case which has the earliest appeal to arbitration date. If this first case was selected for priority scheduling by the Union, the second case will be the Employer's priority case with the earlier appeal date, the third will be the Union's remaining case, and the fourth the Employer's remaining case. If the first case (the case with the earliest appeal date of the parties' four cases) is a case selected for priority scheduling by the Employer, the ordering process described above will be reversed. Unless the parties mutually agree otherwise, any priority cases remaining on the docket from prior calendar year(s) shall remain in their respective positions on the

docket, with the newly-selected priority cases scheduled behind them in the above-described order.

Valerie E. Martin  
Contract Administration NPMHU  
U.S. Postal Service

The procedures outlined in this letter relate to the language of Sections 15.3D and 15.4D2. Management cannot initiate a dispute which includes an issue previously appealed to National level arbitration by the Union, nor does Management have an independent right to appeal a dispute to National level arbitration. If the parties are unable to reach agreement in a dispute initiated by Management, the Union must either appeal that dispute to National arbitration or accept Management's position. Procedures for priority arbitration scheduling of two of each parties' cases during each calendar year are also outlined. The parties may mutually agree to hold local grievances at the appropriate level when they involve specific interpretive issues pending on the National arbitration docket.

## ARTICLE 16 DISCIPLINE PROCEDURE

### Section 16.1 Statement of Principle

In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause such as, but not limited to, insubordination, pilferage, intoxication (drugs or alcohol), incompetence, failure to perform work as requested, violation of the terms of this Agreement, or failure to observe safety rules and regulations. Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement, which could result in reinstatement and restitution, including back pay.

### Just Cause Principle

The principle that any discipline must be for “just cause” establishes a standard that must apply to any discipline or discharge of an employee. Simply put, the “just cause” provision requires a fair and provable justification for discipline.

“Just cause” is a “term of art” created by labor arbitrators. It has no precise definition. It contains no rigid rules that apply in the same way in each case of discipline or discharge. However, arbitrators frequently divide the question of just cause into six sub-questions and often apply the following criteria to determine whether the action was for just cause. These criteria are the *basic* considerations that the supervisor must use before initiating disciplinary action.

- **Is there a rule?** If so, was the employee aware of the rule? Was the employee forewarned of the disciplinary consequences for failure to follow the rule? It is not enough to say, “Well, everybody knows that rule,” or, “We posted that rule 10 years ago.” You may have to prove that the employee should have known of the rule. On the other hand, certain standards of conduct are normally expected in the industrial environment and it is assumed by arbitrators that employees should be aware of these standards. For example, an employee charged with intoxication on duty, fighting on duty, pilferage, sabotage, insubordination, etc., may be generally assumed to have understood that these offenses are neither condoned nor acceptable, even though management may not have issued specific regulations to that effect.
- **Is the rule a reasonable rule?** Management must make sure rules are reasonable, based on the overall objective of safe and efficient work performance. Management’s rules should be reasonably related to business efficiency, safe operation of our business, and the performance we might expect of the employee.

- **Is the rule consistently and equitably enforced?** A rule must be applied fairly and without discrimination. Consistent and equitable enforcement is a critical factor, and claiming failure in this regard is one of the union's most successful defenses. The Postal Service has been overturned or reversed in some cases because of not consistently and equitably enforcing the rules. Consistently overlooking employee infractions and then disciplining without warning is one issue. If employees are consistently allowed to smoke in areas designated as *No Smoking* areas, it is not appropriate suddenly to start disciplining them for this violation. In such cases, management loses its right to discipline for that infraction, in effect, unless it first puts employees (and the unions) on notice of its intent to enforce that regulation again. Singling out employees for discipline is another issue. If several employees commit an offense, it is not equitable to discipline only one.
- **Was a thorough investigation completed?** Before administering the discipline, management must make an investigation to determine whether the employee committed the offense. Management must ensure that its investigation is thorough and objective. This is the employee's *day in court* privilege. Employees have the right to know with reasonable detail what the charges are and to be given a reasonable opportunity to defend themselves *before* the discipline is initiated.
- **Was the severity of the discipline reasonably related to the infraction itself and in line with discipline that is usually administered, as well as to the seriousness of the employee's past record?** The following is an example of what arbitrators may consider inequitable discipline: If an installation consistently issues 5-day suspensions for a particular offense, it would be extremely difficult to justify why an employee with a past record similar to that of other disciplined employees was issued a 30-day suspension for the same offense. There is no precise definition of what establishes a good, fair or bad record. Reasonable judgment must be used. An employee's record of previous offenses may never be used to establish guilt in a case you presently have under consideration, but it may be used to determine the appropriate disciplinary penalty.
- **Was the disciplinary action taken in a timely manner?** Disciplinary actions should be taken as promptly as possible after the offense has been committed.

### **Corrective Rather than Punitive**

The requirement that discipline be "corrective" rather than "punitive" is an essential element of the "just cause" principle. In short, it means that for most offenses management must issue discipline in a "progressive" fashion, issuing lesser discipline (e.g., a letter of warning) for a first offense – remember that discussions are appropriate for first offenses of a minor nature - and a pattern of

increasingly severe discipline for succeeding offenses (e.g., short suspension, long suspension, discharge). The basis of this principle of “corrective” or “progressive” discipline is that discipline is issued for the purpose of correcting or improving employee behavior and not as punishment or retribution.

### **Examples of Behavior**

Section 16.1 lists several examples of misconduct that may constitute just cause for discipline. Some Postal Service managers have mistakenly believed that because these behaviors are specifically listed in the contract, any discipline of employees for such behaviors is “automatically” for just cause. However, arbitrators generally have recognized that these behaviors are intended as examples and that, in any event, even if a particular type of misconduct constitutes just cause for some discipline, management still must prove that the behavior took place, that it was intentional, that the degree of discipline imposed was corrective rather than punitive, etc. So all of the usual rules of “just cause” apply to these specific examples of misconduct as well as to any other conduct for which management issues discipline.

### **Remedies**

Section 16.1’s last sentence establishes the principle that discipline may be overturned in the grievance-arbitration procedure and that remedies may be provided to the aggrieved employee – “reinstatement and restitution, including back pay.” If union and management representatives settle a discipline grievance, the extent of remedies for improper discipline is determined as part of the settlement. If a case is pursued to arbitration, the arbitrator generally states the remedy in the award.

### **Back Pay**

The implementing regulations concerning the back pay provided for in this section are found in the Employee and Labor Relations Manual, Section 436. A Memorandum of Understanding incorporated into the contract provides that where an arbitration award specifies that an employee is entitled to back pay in a case involving disciplinary suspension or removal, the Postal Service must pay interest on the back pay at the Federal Judgment Rate. See the section on Article 15 of this document.

**Question:** May management unilaterally implement modified disciplinary programs without bargaining with the union over such programs?

**Answer:** In a case dealing with PAC, N-DEM and N-TOL modified programs initiated in the prior Central Region, Arbitrator Zumas held that those programs affected several steps of the disciplinary process, drastically altered the progressive nature of the disciplinary process and were of such magnitude not to

be covered by an established past practice justification. He ruled that the unilateral implementation of those programs and the refusal to bargain over them with the union violated the National Agreement.

Source: National Arbitration Award H1M-NA-C 99, Arbitrator N. Zumas, dated May 11, 1987.

**Disciplinary procedures for MHAs are outlined in the *Memorandum of Understanding Re Mail Handler Assistant Employees, Section 3.A. (Other Provisions, Article 15)*. That MOU provides that MHAs who have completed either 90 work days or a 120 calendar day period (whichever comes first) within the preceding six months may be disciplined only for just cause and that such discipline is subject to the grievance-arbitration procedure. The parties also agree that an MHA who has not completed a period of either 90 work days or 120 calendar days within the preceding six months does not have access to the grievance-arbitration procedure if disciplined. Furthermore, in the case of removal for cause within the term of an appointment, an MHA is entitled to advance written notice of the charges against him/her, in accordance with the Fishgold award.**

**Discipline for an MHA who does have access to the grievance-arbitration procedure does not generally have to be issued in the same progressive manner as discipline issued to a career employee. However, an appropriate element of just cause is that discipline should be progressive and corrective in nature rather than punitive. When management removes or otherwise disciplines an MHA, determining whether the disciplinary action taken is appropriate must be based on the individual facts and circumstances of each case.**

**Source: Step 4 Grievance F11M-1F-C 14166312, F11M-1F-D 15006539, F11M-1F-C 15095101, F11M-1F-D 15190470, J11M-1J-D 15053696, F11M-1F-C 15113951, B11M-1B-D 15242839, F11M-1F-D 15299381, J11M-1J-D 14338311, F11M-1F-C15095176 dated February 8, 2016.**

## **Section 16.2 Discussions**

For minor offenses by an employee, management has a responsibility to discuss such matters with the employee. Discussions of this type shall be held in private between the employee and the supervisor. Such discussions are not considered discipline and are not grievable. Following such discussions, there is no prohibition against the supervisor and/or the employee making a personal notation of the date and subject matter for their own personal record(s). However, no notation or other information pertaining to such discussion shall be included in the employee's personnel folder. While such discussions may not be cited as an element of a prior adverse record in any subsequent disciplinary action against an employee, they may be, where relevant and timely, relied upon

to establish that employees have been made aware of their obligations and responsibilities.

Although included in Article 16, a “discussion” is non-disciplinary and thus is not grievable. Discussions are conducted in private between a supervisor and an employee.

Both the supervisor and the employee may keep a record of the discussion for personal use, however the notations are not to be considered official Postal Service records. They may not be included in the employee’s personnel folder and they may not be passed to another supervisor.

Discussions cannot be cited as past record items in any letter of charges in a future disciplinary action. They may be used (when they are relevant and timely) only to establish, via testimony of a supervisor, that an employee has been made aware of some particular obligation or responsibility.

**Source:** Step 4 Grievance H4C-3P-D 1531, dated August 1, 1985.

There are a number of Step 4 decisions regarding discussions. They have resolved the following issues:

- Discussion notations made by a supervisor are strictly personal and are not to be considered official Postal Service documents. They are not to be made a part of a central record system to which other individuals have access.

Source: Step 4 Grievance H8C-5G-C 14672, dated March 17, 1981.

- When a supervisor discussed an employee’s need to improve attendance, the discussion was properly held in private. Under these circumstances, the grievant was not entitled to have a steward present.

Source: Step 4 Grievance H8C-3W-C 25394, dated May 7, 1981.

- Discussions shall not be noted on the reverse of PS Form 3972.

Source: Step 4 Grievance H4C-4G-20241, dated November 16, 1987.

**Question:** Can supervisors exchange written notes regarding a discussion with an employee with other supervisors?

**Answer:** No. Supervisors will not exchange written notes regarding discussions. However, a supervisor of a former employee may orally exchange information relative to discussions with the employee’s current supervisor.

Source: Step 4 Grievance H4C-3W-C 12019, dated April 9, 1986.

**Question:** Can the union be given copies of a supervisor's personal notes that were taken during a discussion?

**Answer:** No. When requested, the union will be given the date and subject of a discussion, providing that the discussion was relied upon by the supervisor in a disciplinary action to establish that the employee had been made aware of his/her obligations and responsibilities.

Source: Step 4 Grievance H4C-5C-C 45726, dated July 27, 1988.

**Question:** What is the proper conduct of a supervisor and an employee during discussions?

**Answer:** During a discussion held between a supervisor and an employee, both parties are expected to conduct themselves in a professional manner at all times. The purpose of such discussions is to give the supervisor the opportunity to bring to the attention of an employee, through non-disciplinary means, a minor offense committed by the employee. Clearly, the intent of a discussion is to provide the supervisor and the employee an informal setting in which both parties may address the minor offense.

Source: Step 4 Grievance H7M-3R-C 2128, dated March 7, 1988.

### **Section 16.3 Letter of Warning**

A letter of warning is a disciplinary notice in writing, identified as an official disciplinary letter of warning, which shall include an explanation of a deficiency or misconduct to be corrected.

[See MOU, page 191]

Letters of warning are official discipline and should be treated seriously. They may be cited as elements of prior discipline in subsequent disciplinary actions subject to the two-year restriction discussed in Section 16.10. National Arbitrator Fasser held that a letter of warning which fails to advise the recipient that it may be appealed through the grievance procedure is procedurally deficient.

Source: National Arbitration Award NB-E-5724, Arbitrator P. Fasser, dated February 23, 1977.

**Question:** Can a modified disciplinary action resulting in a letter of warning meet the conditions of the Memorandum of Understanding, Re: Purge of Warning Letters?

**Answer:** Yes. If a suspension is modified by the parties or an arbitrator resulting in a letter of warning, such letters of warning will not be considered to have been

issued in lieu of a suspension or a removal action pursuant to Item 3 of the Memorandum of Understanding, Re: Purge of Warning Letters.

Source: Letter William J. Downes, Director, Office of Contract Administration to Joseph N. Amma, Jr., Director, Contract Administration, NPMHU, dated December 17, 1987.

#### **Section 16.4 Suspensions of Less Than 14 Days**

In the case of discipline involving suspensions of less than fourteen (14) days, the employee against whom disciplinary action is sought to be initiated shall be served with a written notice of the charges against the employee and shall be further informed that he/she will be suspended, but that such suspension shall be served while on duty with no loss of pay (no-time-off suspension). No-time-off suspensions shall be considered to be of the same degree of seriousness, and will satisfy the same step in the pattern of progressive discipline as the time-off suspension being replaced. As such, no-time-off suspensions are equivalent to the previously issued time-off suspensions as an element of past discipline.

**Question:** Can a suspension of 14 or more days be reduced to a time-off suspension of less than 14 days?

**Answer:** No. Suspensions of less than 14 days must be no-time-off suspensions effective with the 1998 National Agreement. The parties agreed that any suspension of less than 14 days will be served on the clock. If a longer suspension is reduced to less than 14 days, it takes on the characteristics of the shorter suspension which, by definition in this section, is no-time-off.

**Question:** Is there a Postal Service policy regarding issuance of suspensions of less than five working days?

**Answer:** Yes. Postal Service policy has established that letters of warning should be utilized in lieu of suspensions of less than five working days. Where a suspension of five days or more is under consideration to be administratively reduced to a period of four days or less, the reduction should be to a letter of warning. However, agreement can be reached in settlement of a grievance that results in a suspension of less than five working days.

Source: Memorandum, SAPMG Darrell F. Brown, dated February 15, 1974.

#### **Section 16.5 Suspensions of 14 or More Days or Discharge**

In the case of discipline involving suspensions of fourteen (14) days, the employee against whom disciplinary action is sought to be initiated shall be served with a written notice of the charges against the employee and shall be further informed that he/she will be suspended after fourteen (14) calendar days during which fourteen (14)-day period the employee shall remain on the job or on

the clock (in pay status) at the option of the Employer. However, if the Union or the employee initiates a timely grievance prior to the effective date of the action and if the grievance is timely appealed to Step 2, the grievant shall not begin to serve the suspension until after the Step 2 decision has been rendered.

In the case of suspensions of more than fourteen (14) days, or discharge, any employee shall, unless otherwise provided herein, be entitled to an advance written notice of the charges against him/her and shall remain either on the job or on the clock at the option of the Employer for a period of thirty (30) days. Thereafter, the employee shall remain on the rolls (non-pay status) until disposition of the case has been had either by settlement with the Union or through exhaustion of the grievance arbitration procedure.

A preference eligible who chooses to appeal a suspension of more than fourteen (14) days or his discharge to the Merit Systems Protection Board (MSPB) rather than through the grievance arbitration procedure shall remain on the rolls (non-pay status) until disposition of the case has been had either by settlement or through exhaustion of his MSPB appeal. When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed, the Employer is not required to give the employee the full thirty (30) days' advance written notice in a discharge action, but shall give such lesser number of days advance written notice as under the circumstances is reasonable and can be justified. The employee is immediately removed from a pay status at the end of the notice period.

Mail Handlers must be given fourteen (14) calendar days advance written notice prior to serving a suspension of 14 days. (As of April 10, 2002, the effective date of the 2000 National Agreement, the notice period is aligned with the time limits for initiating a grievance regarding the suspension.) During the notice period they must remain either on the job or on-the-clock at the option of the Postal Service. The only exceptions are for emergency or crime situations as provided for in Sections 16.6 and 16.7.

Where an employee begins serving a suspension before the issuance of a written Step 2 decision of a grievance properly appealed under this section, the appropriate remedy is to rescind the suspension and make the grievant whole. Note that, as of this writing, the parties at the National level have an ongoing dispute regarding the Postal Service's right to reissue the suspension to correct an administrative error.

Source: Step 4 Grievances D90M-1D-D 94049865, dated June 26, 1996; A90M-1A-D 96015486 and B90M-1B-D 94029660, dated July 31, 1996.

Mail Handler craft employees must be given 30 days advance written notice prior to serving a suspension of more than 14 days or discharge. During the notice period they must remain either on the job or on-the-clock at the option of the

Postal Service. The only exceptions are for emergency or crime situations as provided for in Sections 16.6 and 16.7.

In a 2009 award, National Arbitrator Eischen concluded that “a Step 2 decision issued by the Postal Service after [a] grievance [challenging a 14-day suspension] has been progressed properly to Step 3 in accordance with the ‘deemed to move’ provisions of Article 15.3.C, because of failure by the Employer to schedule a Step 2 meeting within the time provided in Article 15.2 Step 2 (c) (including mutually agreed to extension periods), has no validity, force or effect under the last sentence of ¶ 2 of Article 16.5 (formerly 16.4) of the USPS/NPMHU National Agreement” (emphasis in original).

Source: National Arbitration Award I94M-11-C 98072898, Arbitrator D. Eischen, dated Jan. 9, 2009.

Issues concerning the MSPB appeal rights afforded preference eligibles are discussed in Section 16.9.

When an employee receives a proposed letter of removal, the time limits provided for in Article 15 (Section 15.2) run from the date of the proposed removal notice and not the decision letter.

- Once a grievance on a notice of proposed removal is filed, it is not necessary to also file a grievance on the decision letter.
- Receipt of a notice of proposed removal starts the 30 day advance notice period in Section 16.5 of the National Agreement.

Source: Step 4 Grievance H4C-3S-D 44197, dated July 17, 1991.

**Question:** How is the notice period for issuance of discipline computed?

**Answer:** The parties have agreed that for purposes of computing the period of notice required prior to the imposition of various disciplinary measures, the notice period is deemed to begin on the calendar day following the date upon which the letter of notification is received by the employee.

Source: Step 4 Grievance H4N-4A-D 30730, dated February 5, 1989.

### **Section 16.6 Indefinite Suspension Crime Situation**

- A The Employer may indefinitely suspend an employee in those cases where the Employer has reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed. In such cases, the Employer is not required to give the employee the full thirty (30) days advance notice of indefinite suspension, but shall give such lesser number of days of advance written notice as under the circumstances is

reasonable and can be justified. The employee is immediately removed from a pay status at the end of the notice period.

- B The just cause of an indefinite suspension is grievable. The arbitrator shall have the authority to reinstate and make the employee whole for the entire period of the indefinite suspension.
- C If after further investigation or after resolution of the criminal charges against the employee, the Employer determines to return the employee to a pay status, the employee shall be entitled to back pay for the period that the indefinite suspension exceeded seventy (70) days, if the employee was otherwise available for duty, and without prejudice to any grievance filed under 6B above.
- D The Employer may take action to discharge an employee during the period of an indefinite suspension whether or not the criminal charges have been resolved, and whether or not such charges have been resolved in favor of the employee. Such action must be for just cause, and is subject to the requirements of Section 16.5 of this Article.

This section deals with indefinite suspensions in crime situations and provides the following:

- The full 30-day notice is not required in such cases. (See also Section 16.5)
- Just cause of an indefinite suspension is grievable and an arbitrator has the authority to reinstate and make whole. National Arbitrator Garrett opined that an indefinite suspension is reviewable in arbitration to the same extent as any other suspension to determine whether 'just cause' for the disciplinary action has been shown. Such a review in arbitration necessarily involves considering at least (a) the presence or absence of 'reasonable cause' to believe the employee guilty of the crime alleged, and (b) whether such a relationship exists between the alleged crime and the employee's job in the USPS to warrant suspension.

Source: National Arbitration Award NC-NAT-8580, Arbitrator S. Garrett, dated September 29, 1978.

- If the USPS returns an employee who was on an indefinite suspension to pay status, after further investigation or after the resolution of the criminal charges against the employee, the employee is entitled to back pay for the period that the indefinite suspension exceeded seventy (70) days, so long as the employee was otherwise available for duty. The indefinite suspension and entitlement to the first 70 days of pay would remain subject to the grievance provisions as stated in Section 16.6B.

- During an indefinite suspension, the employer can take final action to remove the employee and such removal must be for just cause and subject to Section 16.5.

### **Section 16.7 Emergency Procedure**

An employee may be immediately placed on an off duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others. The employee shall remain on the rolls (nonpay status) until disposition of the case has been had. If it is proposed to suspend such an employee for more than thirty (30) days or discharge the employee, the emergency action taken under this Section may be made the subject of a separate grievance.

An employee placed in an off-duty status under this Section may utilize his or her accrued annual leave during this period.

The purpose of this provision is to allow the Postal Service to act “immediately” to place an employee in an off duty status in the specified “emergency” situations.

**Written Notice:** Management is not required to provide advance written notice prior to taking such emergency action. However, an employee placed on emergency off-duty status is entitled to written notice of the reasons within a reasonable period of time. Arbitrator Mittenthal wrote as follows regarding this issue:

The fact that no “advance written notice” is required does not mean that Management has no notice obligation whatever. The employee suspended pursuant to Section 7 has the right to grieve his suspension. He cannot effectively grieve unless he is formally made aware of the charge against him, the reason why the Management has invoked Section 7. He surely is entitled to such notice within a reasonable period of time following the date of his displacement. To deny him such notice is to deny him his right under the grievance procedure to mount a credible challenge against Management’s action.

Source: National Arbitration Award H4N-3U-C 58637/59518, dated August 3, 1990.

**What test must management satisfy?** Usually employees are placed on emergency non-duty status for alleged misconduct. However, the provisions of this section are broad enough to allow management to invoke the emergency procedures in situations that do not involve misconduct- for example, if an

employee does not recognize that he or she is having an adverse reaction to medication. The test that management must satisfy to justify actions taken under Section 16.7 depends upon the nature of the “emergency”. In Award 58637/59518, referenced above, Arbitrator Mittenthal further noted:

My response to this disagreement depends, in large part, upon how the Section 7 “emergency” action is characterized. If that action is discipline for alleged misconduct, then Management is subject to a “just cause” test. . . If, on the other hand, that action is not prompted by misconduct and hence is not discipline, the “just cause” standard is not applicable. Management then need only show “reasonable cause” (or “reasonable belief”) a test which is easier to satisfy.

One important caveat should be noted. “Just cause” is not an absolute concept. Its impact, from the standpoint of the degree of proof required in a given case, can be somewhat elastic. For instance, arbitrators ordinarily use a “preponderance of the evidence” rule or some similar standard in deciding fact questions in a discipline dispute. Sometimes, however, a higher degree of proof is required where the alleged misconduct includes an element of moral turpitude or criminal intent. The point is that “just cause” can be calibrated differently on the basis of the nature of the alleged misconduct.

**Separate grievances:** If, subsequent to an emergency suspension, management suspends the employee for more than thirty (30) days or discharges the employee, the emergency action taken under this section should be grieved separately from the later disciplinary action.

### **Section 16.8 Review of Discipline**

- A In no case may a supervisor impose suspension or discharge upon an employee unless the proposed disciplinary action by the supervisor has first been reviewed and concurred in, in a signed and dated writing, by the installation head or designee.
- B In associate post offices of twenty (20) or less employees, or where there is no higher level supervisor than the supervisor who proposes to initiate suspension or discharge, the proposed disciplinary action shall first be reviewed and concurred in, in a signed and dated writing, by a higher authority outside such installation or post office before any proposed disciplinary action is taken.

Concurrence is a specific contract requirement to the issuance of a suspension or a discharge. It is normally the responsibility of the immediate supervisor to initiate disciplinary action. Before a suspension or removal may be imposed, the discipline must be reviewed and concurred in by a manager who is a higher level than the initiating or issuing supervisor. The act of review and concurrence must

take place prior to the issuance of the discipline. This provision requires that there be a written record of concurrence.

In a case involving the question of whether only the “immediate supervisor” would normally issue discipline to an employee, National Arbitrator S. Das ruled that “issuance of attendance-related discipline by an attendance control supervisor at a particular facility, when the Postal Service deems that to better meet the needs of the Service, does not conflict with the interpretation of Article 16.8 . . .” He noted further that imposition of a suspension or discharge had to meet the review and concurrence requirements and otherwise be consistent with Section 16.1 and any other applicable contractual provisions.

Source: National Arbitration Award Q98C-4Q-C 01059241, Arbitrator S. Das, dated July 7, 2006.

A National Level arbitration award has provided further guidance relating to the meaning of Section 16.8 when it is proposed to suspend or discharge an employee.

The following actions do not constitute a violation of the contract language:

The initiating or issuing official consults, discusses, communicates with or jointly confers with the higher level reviewing authority before deciding to propose suspension or discharge;

The higher level reviewing authority does not conduct an independent investigation, but rather relies upon the record submitted by the initiating or issuing official when reviewing and concurring with the proposed suspension or discharge.

Each of the following actions constitutes a substantive violation of the contract language and requires invalidation of the discipline and a remedy of reinstatement with “make whole” damages:

The initiating or issuing official receives a “command decision” from higher level authority to impose a suspension or discharge;

The decision to impose the suspension or discharge is made jointly by the initiating and higher level reviewing officials;

Either the initiating or reviewing official fails to make an independent substantive review of the evidence prior to imposition of a suspension or discharge.

The following action clearly constitutes a procedural violation of the contract language, for which an arbitral remedy might well be appropriate, but it is not so

clear that such a violation, standing alone, would invalidate the disciplinary action and require reversal and reinstatement in every case. Rather, Regional arbitrators remain free to exercise their own best judgment as to whether, in the facts and circumstances of the individual case, such a violation requires reversal of the disciplinary action or some other remedy:

There is no evidence of written review and concurrence prior to the imposition of a suspension or discharge.

Source: National Arbitration Award E95R-4E-D 01027978, Arbitrator D. Eischen, dated December 3, 2002.

### **Section 16.9 Veterans' Preference**

- A A preference eligible is not hereunder deprived of whatever rights of appeal such employee may have under the Veterans' Preference Act; however, if the employee appeals under the Veterans' Preference Act, the employee will be deemed to have waived further access to the grievance arbitration procedure beyond Step 3 under any of the following circumstances:
1. If an MSPB settlement agreement is reached.
  2. If the MSPB has not yet issued a decision on the merits, but a hearing on the merits before the MSPB has begun.
  3. If the MSPB issues a decision on the merits of the appeal.

**Question:** Can a preference eligible be placed on an off duty status (without pay) by the employer?

**Answer:** Yes. However, if a preference eligible remains in an off duty status (without pay) for more than fourteen (14) days, the employee is entitled to MSPB appeal rights.

- B. In the event the grievance of a preference eligible is due to be scheduled in accordance with Article 15, Section 4, and the preference eligible has a live MSPB appeal on the same action, the parties will not schedule the grievance for arbitration until a final determination is reached in the MSPB procedure. If the grievance is not waived under Section 16.9A1, 2 or 3 above, the case will be scheduled promptly for arbitration. Should the grievance ultimately be sustained or modified in arbitration, the preference eligible employee will have no entitlement to back pay under the National Agreement for the period from the date the case would have been scheduled for arbitration and the date it is actually scheduled for arbitration.

Grievances of preference eligible employees who have a live MSPB appeal on the same action will not be scheduled for arbitration until a final determination is reached in the MSPB procedure. Note the last sentence of Section 16.9B waives liability for the period from the date the case would have been scheduled for arbitration and the date it is actually scheduled for arbitration.

**EEO dual/filings — no bar to arbitration.** Section 16.9 does not apply and thus does not bar the arbitration of a grievance where a grievant has asserted the same claim in an Equal Employment Opportunity (EEO) complaint.

Nor does it apply where a preference eligible grievant has appealed the same matter through the EEOC and then to the MSPB under the “mixed case” federal regulations.

Source: National Arbitration Award D90N-4D-D 95003945, Arbitrator C. Snow, dated January 1, 1997.

### **Section 16.10 Employee Discipline Records**

The records of a disciplinary action against an employee shall not be considered in any subsequent disciplinary action if there has been no disciplinary action initiated against the employee for a period of two years. Upon the employee's written request, a disciplinary notice or decision letter will be removed from the employee's official personnel folder after two years if there has been no disciplinary action initiated against the employee in that two year period.

[See Memos, pages 192-194]

**(The preceding Article, Article 16, shall apply to Mail Handler Assistant employees to the extent provided in the MOU Re: Mail Handler Assistant employees.)**

(Additional discipline procedure provisions regarding Mail Handler Assistant Employees are found in the MOU RE: Mail Handler Assistant Employees.)

**Question:** Are there procedures for maintaining disciplinary records and listing past elements in disciplinary actions?

**Answer:** All records of totally overturned disciplinary actions will be removed from the supervisor's personnel records as well as from the employee's Official Personnel Folder.

If a disciplinary action has been modified, the original action may be modified by pen and ink changes so as to obscure the original disciplinary action in the employee's Official Personnel Folder and the supervisor's personnel records, or

the original action may be deleted from the records and the discipline reissued as modified.

When listing past elements in a disciplinary action, only the final action resulting from a modified disciplinary action will be included, except where modification is the result of a “last chance” settlement, or where the discipline is to be reduced to a lesser penalty after an intervening period of time and/or certain conditions are met.

Source: Step 4 Grievance H4C-5R-C 43882, dated August 17, 1988.

**Question:** May discipline which has been fully rescinded be cited or considered in a subsequent disciplinary action?

**Answer:** No. When a notice of discipline is fully rescinded, whether by settlement, arbitration award or independent management action, that disciplinary action is deemed not to have been “initiated” and may not be cited or considered in any subsequent disciplinary action.

Source: Step 4 Grievance H4N-5G-D 7167, dated January 5, 1989.

**Question:** Can management list disciplinary actions which are over two years old as aggravating factors in a notice of proposed removal, even though the employee had received no discipline for a period of two years?

**Answer:** No. Such discipline cannot be considered or cited in a subsequent disciplinary action. However, management takes the position that it is not precluded from introducing such prior disciplinary action for purposes of rebuttal or impeachment in the grievance procedure, in arbitration, or in other forums of appeal. (Note that, as of this writing, the parties at the National level have an ongoing dispute regarding management’s use of prior disciplinary action for rebuttal or impeachment purposes.)

Source: Pre-arbitration Settlement H4T-5D-D 15115, dated September 7, 1993.

**Question:** Should outdated disciplinary action “cover letters” be removed from the supervisor’s personnel records?

**Answer:** “Cover letters” or notations concerning outdated disciplinary notices or decision letters, and the requests for removal of such from the employee’s official personnel folder will be removed from and not maintained in the supervisor’s personnel records.

Source: Pre-arbitration Settlement H1M-3A-C 14019, dated February 22, 1985.

**Question:** Can an employee request to have a disciplinary notice or decision letter removed from his/her Official Personnel Folder?

**Answer:** Yes. Upon the employee's written request, a disciplinary notice or decision letter will be removed from the employee's Official Personnel Folder after two years if there has been no disciplinary action initiated against the employee in that two year period.

## **MEMORANDUM OF UNDERSTANDING**

### **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 Postal Mail Handlers Union. To qualify to be purged, a Letter of Warning must:

1. Have an issue date prior to the effective date of the **2016** National Agreement between the parties;
2. Have been in effect for 6 months or longer and not cited as an element of prior discipline in any subsequent disciplinary action; and
3. Not have been issued in lieu of a suspension or a removal action.

All grievances associated with discipline that is purged as a result of this Memorandum shall be withdrawn.

**(The preceding MOU, Purge of Warning Letters, shall apply to Mail Handler Assistant employees.)**

## **MEMORANDUM OF UNDERSTANDING**

### **TASK FORCE ON DISCIPLINE**

The parties agree to establish at the national level a "Task Force on Discipline." The Task Force shall have three (3) representatives of the Union and three (3) representatives of the USPS.

The purpose of the Task Force shall be to study the manner in which discipline is administered by the USPS, the manner in which disputes about discipline are handled by the parties, and to recommend changes and improvements which can be made in the discipline and dispute resolution systems.

The Task Force is authorized, at its discretion, to conduct tests of alternative discipline and dispute resolution systems in various facilities.

The Task Force shall convene periodically but at least quarterly, at such times and at such places as it deems appropriate during the term of the **2016** National Agreement. No action or recommendations may be taken by the Task Force except by an agreement of the parties.

Nothing herein shall preclude any of the parties from exercising the rights which they may otherwise have.

## **MEMORANDUM OF UNDERSTANDING**

### **MODIFIED DISCIPLINE PROGRAMS**

The parties agree to continue with the testing of Modified Article 16. The purpose and format of Modified Article 16 shall remain the same as it was originally developed under the Task Force on Discipline, unless changed by the Task Force. Those sites which are currently involved in the testing of Modified Article 16 shall continue with the testing, unless the local parties notify the Task Force on Discipline to the contrary, in accordance with the stated guidelines as developed by the Task Force.

This Memorandum of Understanding will terminate upon the expiration of the **2016** National Agreement.

## **MEMORANDUM OF UNDERSTANDING**

### **ROLE OF THE INSPECTION SERVICE IN LABOR RELATIONS MATTERS**

The parties recognize the role of the Postal Inspection Service in the operation of the Postal Service and its responsibility to provide protection to our employees, security to the mail and service to our customers.

Postal Inspection Service policy does not condone disrespect by Inspectors in dealing with an individual. The Postal Inspection Service has an obligation to comply fully with the letter and spirit of the National Agreement between the United States Postal Service and the National Postal Mail Handlers Union, and will not interfere in the dispute resolution process as it relates to Articles 15 and 16.

The parties further acknowledge the necessity of an independent review of the facts by management prior to the issuance of disciplinary action, emergency procedures, indefinite suspensions, enforced leave or administrative actions.

Inspectors will not make recommendations, provide opinions, or attempt to influence management personnel regarding a particular disciplinary action, as defined above.

Nothing in this document is meant to preclude or limit Postal Service management from reviewing Inspection Service documents in deciding to issue discipline.

## **MEMORANDUM OF UNDERSTANDING**

### **STEP INCREASE, UNSATISFACTORY PERFORMANCE**

The Parties agree that periodic step increases will not be withheld for reason of unsatisfactory performance and that all other aspects of the current step increase procedures remain unchanged, unless otherwise provided for by the **2016** National Agreement.

## **MEMORANDUM OF UNDERSTANDING**

### **ARTICLE 16 PRIVACY IN THE DISCIPLINARY PROCESS**

The parties agree with the principle that when it is necessary for a supervisor to take corrective action under the discipline procedure, such action between the supervisor and the employee should be private and should be conducted in an environment which does not compromise that privacy. While the use of an office in which only the participants are present is the preferred situation, it is recognized that other alternatives may be necessary.

Regardless of the situation, we agree that disciplinary matters between a supervisor and an employee must be done in a manner that would not compromise this principle.

The use of a witness to confirm the delivery of a disciplinary notice or, when appropriate, the presence of a steward when requested by the employee, is not considered a violation of this principle.

## **ARTICLE 17 REPRESENTATION**

### **Section 17.1 Stewards**

Stewards may be designated for the purpose of investigating, presenting and adjusting grievances.

Stewards are provided with important rights and responsibilities by the terms of the National Agreement and the National Labor Relations Act. Management is required to cooperate with stewards in various ways, as outlined hereunder, as they perform their grievance-handling duties.

The specific steward rights and responsibilities set forth in Article 17 are supplemented by other provisions of the National Agreement, including Article 6 (Section 6.4D)[seniority in layoff or reduction in force]; Article 14 (Section 14.2A)[safety]; Article 15 [grievance handling]; Article 27 (Section 27.2)[employee claims]; Article 31 (Section 31.3)[information requests]; Article 37 (Sections 37.2 and 37.5)[inspection of lockers and use of USPS telephones]; and the Memorandum of Understanding Re. Improper By-Pass Overtime.

### **Section 17.2 Appointment of Stewards**

- A The Union will certify to the Employer in writing a steward or stewards and alternates in accordance with the following general guidelines. Where more than one steward is appointed, one shall be designated chief steward. The selection and appointment of stewards or chief stewards is the sole and exclusive function of the Union. Stewards will be certified to represent employees in specific work location(s) on their tour; provided no more than one steward may be certified to represent employees in a particular work location(s). The number of stewards shall be in accordance with the formula as hereinafter set forth:

Employees in the bargaining unit per tour or station

Up to 49	"	1 steward
50 to 99	"	2 stewards
100 to 199	"	3 stewards
200 to 499	"	5 stewards
500 or more	"	5 stewards plus additional steward for each 100 employees

At each installation, the Union may certify one representative employed at that installation to represent employees in all work locations and on all tours in complaints involving issues of general application in that installation. Such complaints involve tour-wide and/or installation-wide issues, including, but not limited to, local policy issues, casual employment/utilization and Acts of God. The activities of such Union representative shall be in lieu of a steward designated under the formula above and shall be in accordance with Section 17.3. Payment, when applicable, shall be in accordance with Section 17.4.

The selection and appointment of stewards is the sole and exclusive function of the union. This section provides the formula to determine the number of stewards that a local union may appoint; the number of regular stewards appointed may be less than the number provided by the formula, but it cannot be greater than that number. When appointing stewards, the union must certify those stewards to the employer in writing and must specify the work location(s) for which each steward will provide representation; only one steward may be certified for each work location. Alternate stewards may be appointed to cover absences of regular stewards.

Source: Step 4 Grievance H1M-4K-C 7453, dated August 21, 1985.

This language provides for the filing of a single grievance to cover employees across work locations/tours when the alleged violation has an impact on all or most of the employees in an installation. This provision allows for the filing of a single grievance when the circumstances impact a group of employees larger than those in a specific work location as provided by the class action grievance provisions of Article 15.2Step1(a). Examples include cases involving local policy issues, casual employment/utilization, and Acts of God (e.g., snow days). See further the explanation in the Letter reproduced at the end of this Article.

**Question:** May an alternate steward continue processing a grievance that he/she initiated?

**Answer:** Once an alternate steward has initiated a grievance, the alternate steward may continue processing that grievance, as determined by the union. However, only one steward will be given time for processing the grievance.

Source: Step 4 Grievance H1N-1J-C 5026, dated May 24, 1984.

**Question:** Must all stewards be absent before an alternate steward is allowed to represent employees?

**Answer:** No. Each steward is certified to represent employees in a specific work location, and the alternate may serve in a particular steward's absence. All stewards need not be absent before an alternate is allowed to represent employees.

Source: Step 4 Grievance NC-S-4915, dated December 21, 1977

**Question: Can a MHA serve as a union steward?**

**Answer: Yes**

**B** At an installation, the Union may designate in writing to the Employer one Union representative actively employed at that installation to act as a steward to investigate, present and adjust a specific grievance or to investigate a specific problem to determine whether to file a grievance. The activities of such Union representative shall be in lieu of a steward designated under the formula in Section 2A and shall be in accordance with Section 17.3. Payment, when applicable, shall be in accordance with Section 17.4.

This section provides that the union may designate one union representative actively employed at that installation to act as a steward for the handling of a specific grievance or for the investigation of a specific problem for purposes of determining whether to file a grievance. While the designation is no longer limited to elected officers of the union, the representative selected under this provision must have specialized expertise in the issue in question. The designation must be in writing at the installation level and applies to the specific grievance or specific problem only; the designation does not carry over. See further the explanation in the Letter reproduced at the end of this Article.

The union representative designated under this section acts in lieu of a steward certified under Section 17.2A. The union representative is entitled to payment under Section 17.4 only if the time spent would be part of the representative's regular work day; i.e., payment would not be made to a full-time union representative.

**C** To provide steward service to a number of small installations where a steward is not provided by the above formula, the Union representative certified to the Employer in writing and compensated by the Union may perform the duties of a steward.

This provision can be used by the local unions to provide steward coverage to smaller installations where members of the bargaining unit are employed. Stewards designated for this purpose are not entitled to travel time or official time on the clock to investigate, present or adjust grievances. Written certification at the installation level is once again required.

**D** At the option of the Union, representatives not on the Employer's payroll shall be entitled to perform the functions of a steward or chief steward, provided such representatives are certified in writing to the Employer at the District level, with a courtesy copy to the Area, and providing such

representatives act in lieu of stewards designated under the provisions of 2A or 2B above.

In these instances, written certification must be provided to management at the District level, with a copy to the Area. Once again, all activities of the designated union representative are compensated by the union and the designated representative acts in lieu of a steward designated under Section 17.2A or 17.2B.

**Question:** Can a union member actively employed at one postal facility or installation be designated as the union representative for a Step 2 meeting at another facility or installation under the provisions of Section 17.2D?

**Answer:** Yes. A union member actively employed in one postal facility or installation may be designated as a union representative to process a grievance at another postal facility or installation. Such employee: needs to be certified to the Employer, in writing, in accordance with Section 17.2D; will not be on the Employer's official time (i.e., will be compensated by the union); and will act in lieu of the steward designated under Sections 17.2A or .2B at the facility or installation where the grievance was initiated.

Source: Pre-arbitration Settlement H8N-2B-C 12054, dated May 20, 1982; Interpretive Agreement, dated June 2, 1982.

**Question:** Does a steward have the right to be represented by another steward?

**Answer:** Yes. A steward, just as any other employee, has a right to representation by another steward.

Source: Step 4 Grievance H1C-3W-C 41731, dated February 15, 1985.

### Section 17.3 Rights of Stewards

- A When it is necessary for a steward to leave his/her work area to investigate and adjust grievances or to investigate a specific problem to determine whether to file a grievance, the steward shall request permission from the immediate supervisor and such request shall not be unreasonably denied. In the event the duties require the steward leave the work area and enter another area within the installation or post office, the steward must also receive permission from the supervisor from the other area he/she wishes to enter and such request shall not be unreasonably denied.
- B The steward, chief steward or other Union representative properly certified in accordance with Section 17.2 above may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s),

supervisors and witnesses during working hours. Such requests shall not be unreasonably denied.

A number of issues relating to this language have been resolved or adjudicated over the course of the parties' bargaining relationship.

Arbitrator Garrett ruled that this section does not authorize management to determine in advance the amount of time which a steward reasonably needs to investigate a grievance. In a case in which he concluded that a specific local form designed to assist management in authorizing steward time had to be withdrawn and "given no effect," the arbitrator provided the following guidance regarding certain permissible restrictions which management can place on a steward:

"This is not to say, of course, that Management cannot (1) ask a Steward seeking permission to investigate, adjust, or write a grievance to estimate the length of time that the Steward anticipates he or she will be away from his or her work station; or (2) that a Supervisor cannot decline to release a Steward from duty during a period of time when his or her absence during such period will unnecessarily delay essential work; or (3) that a Supervisor, in advance, may not specify a time period during which the Steward's absence will unnecessarily delay essential work. Nor does this decision in any way bar the Service from taking necessary action, consistent with the Agreement, in any case where it can be established that a Steward has improperly obtained permission to leave his or her work station under the guise of investigating or preparing a grievance."

Source: National Arbitration Award MB-NAT-562/936, Arbitrator S. Garrett, dated January 19, 1977.

Subsequent to the Garrett award, the parties further clarified their understanding of the Section 17.3 requirements as stated below:

"If management must delay a steward from investigating or continuing to investigate a grievance, management should inform the steward involved of the reasons for the delay and should also inform the steward of when time should be available. Likewise, the steward has an obligation to request additional time and to state reasons why this additional time is needed. Requests for additional time to process grievances should be dealt with on an individual basis and not be unreasonably denied."

Source: Step 4 Grievance NC-C-16045, dated November 22, 1978.

Management may ask a steward who is seeking permission to investigate, adjust, or write a grievance to estimate the length of time that the steward anticipates he/she will be away from the work area.

Source: Pre-arbitration Settlement H8C-1M-C 17945, dated February 19, 1982.

Under normal circumstances, employees should be permitted a reasonable amount of time to consult with their steward. Reasonable time cannot be measured by a predetermined factor.

Source: Step 4 Grievance H1C-3W-C 44345, dated 1985.

While the steward normally determines how much time the grievant needs to be present during the processing of a grievance, the immediate supervisor may set a specified time to begin and end a period of grievance handling activity due to service needs. If additional time is necessary, the steward should discuss the need with the supervisor. Additional time may be granted in conjunction with the previously specified time or at a later time or date. Requests for grievance time or denials of such requests are subject to the rule of reason based upon local fact circumstances.

Source: Step 4 Grievances H1C-4B-C 25906/25998, dated June 4, 1984.

**Question:** How should situations be handled in which management must delay an employee's request for a steward?

**Answer:** Management should inform the employee involved of the reasons for the delay and of when time should be available.

Source: Step 4 Grievance NC-C-12200, dated November 13, 1978.

Section 17.3 also outlines the right of the union to review documents, files and other records, as well as the right to interview grievants, supervisors and witnesses. See also Article 31, (Section 31.3), regarding the union's right to information relevant to collective bargaining and contract administration.

Steward requests to review documents should include a statement as to how the request is relevant to the processing of a grievance or to determining whether a grievance exists. Management should respond to questions and document requests in a cooperative and timely manner. When a relevant request is made, management should provide for review of the requested documentation as soon as is reasonably possible.

Regarding the review of PS Form 2608, the parties have agreed that since the supervisor's Step 1 Grievance Summary form is not completed at the time of the Step 1 discussion, it is not available for the union to review until Step 2. The PS Form 2608 will be made available, if requested by the union at Step 2 or any subsequent step of the grievance procedure.

Source: Step 4 Grievance H1M-1J-C 10717, dated March 22, 1984.

Photographs may be taken only with the permission of the installation head or local postmaster.

Source: Postal Operations Manual Chapter 1, Section 124.58

Judicious use of a camera to establish or refute a grievance may facilitate resolution of some problems. If the Union desires to take photographs on the work room floor, permission must first be obtained from local management, and a supervisor must be present. If management deems it necessary to take evidential photographs, it would also be prudent to have a steward or union official present.

Source: Step 4 Grievance NC-S-5482, dated April 22, 1977.

Notwithstanding the above, however, stewards are not permitted to use camera equipment to photograph mail processing operations on postal premises. Use of such equipment is not within the purview of Article 17.

Source: Pre-arbitration Settlement H8C-3W-C 22224, dated February 19, 1982.

Management may determine the location where Step 1 meetings or interviews by union stewards are to be conducted. The location chosen should be reasonably private (although not necessarily completely out of eyesight) and reasonably free from excessive noise.

Source: Step 4 Grievances H4M-4K-C 9874, dated April 2, 1986, and H8C-5K-C 11884, dated January 15, 1981.

Stewards have the right to leave the work area to interview non-postal witnesses when it has been determined that such witnesses possess “relevant information and/or knowledge directly related to the instant dispute under investigation.” In such cases, reasonable time on the clock would be provided. The supervisor and/or the steward may call the potential witness in advance to assure his/her willingness and availability to be interviewed and to make arrangements for the interview.

Source: National Arbitration Award N8-NA-0219, Arbitrator B. Aaron, dated November 10, 1980.

Subsequent to this Aaron arbitration award, the parties recognized the following as nationally established policy regarding a steward’s request to leave the work area while on-the-clock to interview a non-postal witness:

“ . . . a steward’s request to leave his/her work area to investigate a grievance, shall not be unreasonably denied. Subsequent to determining

that a non-postal witness possesses relevant information and/or knowledge directly related to the instant dispute under investigation, a steward may be allowed a reasonable amount of time on-the-clock, to interview such witness, even if the interview is conducted away from the postal facility. However, each request to interview witnesses off postal premises must be reasonable and viewed on a case by case basis. For example, it is not unreasonable for a supervisor and/or steward to telephone the prospective witness to ascertain availability and willingness to be interviewed and, if willing, to establish a convenient time and locale.”

Source: Memorandum of Understanding, 1982.

Stewards who are processing or investigating a grievance may interview postal inspectors on appropriate occasions; e.g., with respect to any events actually observed by an inspector and upon which disciplinary action was based. Requests for such interviews are to be made to the installation head or designee. The parties disagree as to whether in other circumstances a steward should be given the opportunity to interview the involved inspector.

Source: Pre-arbitration Settlement N8-N-0224, dated March 10, 1981.

In a case dealing with a request for a supervisor’s discussion notes, Arbitrator Mittenthal ruled that access to records is not absolute. Access may be denied where management makes a “reasonable” determination that such documents are not “necessary” for the processing of a grievance.

Source: National Arbitration Award H8N-3W-C 20711, Arbitrator R. Mittenthal, dated February 16, 1982.

**Question:** Are union stewards entitled to copies of employee medical records when such records are relevant to a grievance?

**Answer:** Yes. Relevant medical records are subject to release in accordance with the Administrative Support Manual, Appendix, USPS 120.090.

C While serving as a steward or chief steward, an employee may not be involuntarily transferred to another tour, to another station or branch of the particular post office or to another independent post office or installation unless there is no job for which the employee is qualified on such tour, or in such station or branch, or post office. If an employee requests a steward or Union representative to be present during the course of an interrogation by the Inspection Service, such request will be granted. All polygraph tests will continue to be on a voluntary basis.

This section provides certain protections for stewards from involuntary reassignment; this right is commonly referred to as “super seniority.” This

language protects a steward from being involuntarily reassigned from a tour or installation unless there is no duty assignment for which the steward is qualified. The parties agreed that this protection applied to a steward upon conversion to full-time, even if it resulted in the excessing of another employee in order to provide the steward with a duty assignment.

Source: Step 4 Grievance H1M-1A-C 13294, dated September 4, 1984.

In the 1975 case, *NLRB v. J. Weingarten, Inc.*, the U.S. Supreme Court held that an employee has a right, under Section 7 of the National Labor Relations Act, to have a union representative present whenever he or she is interviewed by a supervisor or Postal Inspector and has reasonable cause to believe that discipline will result from that interview. This right is independent of any rights under the National Agreement.

It must be remembered, however, that the Weingarten right is the employee's right and not the union's. Thus, to be activated, the employee must request the presence of a union representative; the union cannot exercise Weingarten rights on the employee's behalf. Additionally, management is not required to inform an employee of his/her Weingarten right to representation.

Once the request for representation is made, the employer is required to either:

1. grant the request;
2. deny the request and offer the employee the opportunity to continue the interview without union representation; or
3. deny the request and hold no interview at all.

Employees also have the right under Weingarten to a pre-interview consultation with a steward. Federal courts have extended this right to pre-meeting consultations between employee and union representative prior to Inspection Service interrogations. (*U.S. Postal Service v. NLRB, D.C. Cir. 1992.*)

During a Weingarten interview, the employee has the right to the steward's assistance; the steward is not required to be a silent witness. Although ELM Section 666.6 requires all employees to cooperate with postal investigations, the employee retains the right under Weingarten to have a steward present before answering questions in this situation. The employee may respond that he/she will answer questions once a steward is provided.

#### **Section 17.4 Payment of Stewards**

A The Employer will authorize payment only under the following conditions:

Grievances:

Steps 1 and 2 The aggrieved and one Union steward (only as permitted under the formula in Section .2A) for time actually spent in grievance handling, including investigation and meetings with the Employer. The Employer will also compensate a steward for the time reasonably necessary to write a grievance. In addition, the Employer will compensate any witnesses for the time required to attend a Step 2 meeting

Meetings called by the Employer for information exchange and other conditions designated by the Employer concerning contract application.

B Employer authorized payment as outlined above will be granted at the applicable straight time rate, providing the time spent is a part of the employee's or steward's (only as provided for under the formula in Section 2A) regular work day.

Arbitrator Mittenthal ruled that grievance handling could not reasonably be said to include time while a grievant travels to attend a grievance meeting in another postal facility. He stated that grievance handling begins only when the grievant arrives at the meeting. However, different language applied to witnesses, providing payment for the “time required to attend” a Step 2 meeting; thus, payment for travel time for witnesses would be appropriate.

Source: National Arbitration Award N8-N-0221, Arbitrator R. Mittenthal, dated January 18, 1982.

Mittenthal’s decision was further applied to deny payment to a steward for time spent traveling between two facilities for grievance processing.

Source: Pre-arbitration Settlement H8C-5D-C 6315, dated September 25, 1984.

There is also no requirement to compensate a steward who accompanies an employee to a medical facility for a fitness-for-duty examination.

Source: Step 4 Grievance NC-N-12792, dated December 13, 1978.

In another case, Arbitrator Mittenthal ruled that management is required to provide stewards with time on the clock for purposes of writing grievance appeals to Step 3, as appeals from Step 2 to Step 3 involved “Step 2 ‘grievance handling.’”

Source: National Arbitration Award A8-E-0021, Arbitrator R. Mittenthal, dated December 10, 1979.

**Question:** Are union stewards entitled to continue working into an overtime status for the sole purpose of processing grievances?

**Answer:** Under Section 17.4, payment of stewards is “at the applicable straight time rate, providing the time spent is a part of the employee’s or steward’s (only as provided for under the formula in Section 2A) regular work day.” However, a steward who is already working in an overtime status, is not precluded from processing grievances solely based on the fact that he/she is in an overtime status. In those situations, management will not unreasonably deny the steward time to perform union duties.

Source: Step 4 Grievance H1C-3F-C 43267, et al., dated February 26, 1986.

**Question:** Is an employee entitled to overtime compensation for time spent at a grievance hearing outside of their regular work hours?

**Answer:** Article 17 contains no provisions for compensating employees whose attendance at arbitration hearings or grievance meetings extends beyond their normally scheduled work hours. Please refer to Article 15 (Section 15.4A5) for provisions governing possible changes in work schedules for grievants or witnesses at arbitration hearings.

Source: Step 4 Grievance H1C-5H-C 17671, dated April 27, 1984.

However, in Article 15 (Section 15.4A5), the parties have agreed that, absent a more permissive local past practice and at no cost to the Employer, the Employer will permit one (1) change of work schedule per case scheduled for arbitration for either the grievant or a witness, provided notice is given to his or her immediate supervisor at least two (2) days prior to the scheduled arbitration hearing. For grievance meetings at Steps 1 and 2 of the grievance procedure, the provisions of Section 17.4 captioned Payment of Stewards will control.

**Question:** Should a steward on light duty be authorized steward time?

**Answer:** A steward on light duty may perform steward duties unless the steward’s medical restrictions preclude such activity.

Source: Step 4 Grievance H4C-3W-C 20157/20158, dated February 3, 1987.

### **Section 17.5 Union Participation in New Employee Orientation**

During the course of any employment orientation program for new career or non-career employees covered by this Agreement, **or in the event a current postal employee is reassigned to the mail handler craft**, a representative of the Union representing the craft to which the new **or current** employees are assigned shall be provided ample opportunity to address such new employees, provided that this provision does not preclude the Employer from addressing employees concerning the same subject. In addition, at the time any non-career employees covered by this Agreement become eligible for health insurance, the Union will be provided ample opportunity to address such employees on the

subject.

Health benefit enrollment information and forms will not be provided during orientation until such time as a representative of the Union has had an opportunity to address such new employees.

The union is to be provided “ample” time to address new **bargaining unit** employees, **whether they are career or non-career (MHAs)** during the orientation program. **The union will also be provided time to address current postal employees (clerks, carriers, etc.) who are reassigned to the Mail Handler craft.**

**Additionally, the union will be allowed to address an MHA at the time that they become eligible for health insurance.**

The parties also have agreed that health benefit enrollment information will not be provided to new employees during orientation until such time as the union representative has had an opportunity to address the new employees.

Section 17.5 does not preclude management officials from being present when the union addresses new employees during orientation, except in those cases where an established past practice precluding such presence exists.

Source: Step 4 Grievance H1C-5D-C 21764, dated December 17, 1984.

### **Section 17.6 Checkoff**

A In conformity with Section 2 of the Act, 39 U.S.C. 1205, without cost to the Union, the Employer shall deduct and remit to the Union the regular and periodic Union dues from the pay of employees who are members of such Union, provided that the Employer has received a written assignment which shall be irrevocable for a period of not more than one year, from each employee on whose account such deductions are to be made. The Employer agrees to remit to the Union all deductions to which it is entitled within fourteen (14) days after the end of the pay period for which such deductions are made. Deductions shall be in such amounts as are designated to the Employer in writing by the Union.

B The authorization of such deductions shall be in the following form:

**AUTHORIZATION FOR DEDUCTION OF DUES  
UNITED STATES POSTAL SERVICE**

I hereby assign to the National Postal Mail Handlers Union, a Division of the Laborers' International Union of North America, AFL CIO, Local Union

No. \_\_\_\_\_, from any salary or wages earned or to be earned by me as your employee (in my present or any future employment by you) such regular and periodic membership dues as the Union may certify as due and owing from me, as may be established from time to time by said Union. I authorize and direct you to deduct such amounts from my pay and to remit same to said Union at such times and in such manner as may be agreed upon between you and the Union at any time while this authorization is in effect.

This assignment, authorization and direction shall be irrevocable for a period of one (1) year from the date of delivery hereof to you, and I agree and direct that this assignment, authorization and direction shall be automatically renewed, and shall be irrevocable for successive periods of one (1) year, unless written notice is given by me to you and the Union not more than twenty (20) days and not less than ten (10) days prior to the expiration of each period of one (1) year. This assignment is freely made pursuant to the provisions of the Postal Reorganization Act and is not contingent upon the existence of any agreement between you and my Union.

Signature of Employee	Date
-----------------------	------

Name of Employee (Print, Last Name, First, Middle)	Social Security Number
---	------------------------

Home Address (Street and Number)	(City and State)	(Zip Code)
-------------------------------------	------------------	------------

Postal Installation	Installation	Finance Number
---------------------	--------------	----------------

**FOR USE BY LOCAL UNION OFFICIAL**

National Postal Mail Handlers Union Local Union  
 A Division of the Laborers' International  
 Union of North America, AFL-CIO \_\_\_\_\_  
 Local Union No. \_\_\_\_\_

I hereby certify that the regular dues of the Local Union for the above named member are currently established at  
 \$\_\_\_\_\_ per pay period.

Signature and Title of Authorized Union Official	Date
--	------

**FOR USE BY EMPLOYER REPRESENTATIVE**

Date of Delivery to Employer

Signature and Title of Employer Representative

- C Notwithstanding the foregoing, employees' dues deduction authorizations (Standard Form 1187) which are presently on file with the Employer on behalf of the Union, shall continue to be honored and given full force and effect by the Employer unless and until revoked in accordance with their terms.
- D The Employer agrees that it will continue in effect, but without cost to employees, its existing program of payroll deductions at the request and on behalf of employees for remittance to financial institutions including credit unions. In addition, the Employer agrees without cost to the employee to make payroll deductions on behalf of such organization or organizations as the Union shall designate to receive funds to provide group automobile insurance for employees and/or homeowners/tenant liability insurance for employees, provided only one insurance carrier is selected to provide such coverage.

[See Memo, page 194]

**(The preceding Article and Sections, Article 17, Sections 2,3,4,5, and 6 shall apply to Mail Handler Assistant employees.)**

**Question:** Are employees permitted to complete PS Form 1187 (Authorization for Deduction of Union Dues) during employee orientation?

**Answer:** Completion of Form 1187 is permitted during employee orientation in the areas designated by management.

Source: Step 4 Grievance H7M-3E-C 2411, dated April 8, 1988.

**Question: If an MHA is reappointed to a new term, do they have to execute a new Standard Form 1187 to remain a member of the Union?**

**Answer: No. The union enrollment is active, and appropriate withholding occurs if an MHA separates and returns to the same non-career MHA job within 180 days of the separation. The enrollment is also active if the MHA is promoted to a career mail handler bargaining unit position.**

**MEMORANDUM OF UNDERSTANDING**

**ARTICLE 17.6D PAYROLL ADJUSTMENTS**

As soon as administratively practicable, the Postal Service will increase the maximum allotments in the existing program by providing one additional allotment for the use of NPMHU bargaining unit employees.

The MOU increases the number of allotments that can be utilized by mail handlers to a total of three (3) plus net-to-bank; the new allotment can be used for any purpose that such allotments are authorized.

John F. Hegarty  
National President  
National Postal Mail Handlers Union  
1101 Connecticut Avenue NW Suite 500  
Washington, DC 20036-4304

Dear Mr. Hegarty:

During negotiation of the 2006 National Agreement, we agreed to the following:

Article 17.2A: Management will not rely upon the new language agreed to in the 2006 National Agreement to argue, in any forum, that grievances were procedurally defective if filed by the union regarding issues affecting more than one specific work location in an installation as provided in the pre-existing language in Article 17.2A. Arguments concerning unrelated procedural defects are unaffected and may still be made.

Article 17.2B: The union agreed that the term “representative” refers to a steward, officer, former officer or a mail handler bargaining unit employee with a specialized expertise pertinent to the specific issue in question.

The parties further agreed that these understandings will be incorporated into the Contract Interpretation Manual (CIM).

Valerie E. Martin  
Manager, Contract Administration NPMHU  
U.S. Postal Service

The agreement related to Section 17.2A provides assurance that management will not rely upon the new language to support procedural challenges to grievances that covered employees in more than one specific work location and that were filed prior to the 2006 National Agreement. The agreement does not preclude procedural challenges that were made on other bases.

The language related to Section 17.2B provides a definition of the type of “representative,” other than the previous language of “officer,” who will be authorized to deal with a specific issue or grievance under this section.

## ARTICLE 18 NO STRIKE

### Section 18.1

The Union in behalf of its members agrees that it will not call or sanction a strike or slowdown.

Federal law has long prohibited strikes by postal and most other federal employees and has provided criminal penalties for violations. The Postal Reorganization Act of 1970 continued to apply the strike prohibitions of Title 5, Section 7311 of the U.S. Code (5 U.S.C. §7311) to postal employees, as well as the federal criminal penalties for violations contained in 18 U.S.C. §1918. In Section 18.1, the Union agrees on behalf of its members that it will not call or sanction a strike or slowdown.

**Question:** Why are strikes by postal employees referred to as “illegal strikes”?

**Answer:** Because the “no strike” prohibition is mandated by federal law (5 U.S.C. § 7311).

In an unnumbered National Award, seven arbitrators ruled in a case involving management’s determination to issue termination or proposed termination notices to employees who were “positively identified as in the picket line or otherwise appeared to be participating in a (1978) work stoppage” and were “scheduled to be working . . . during the time of their participation . . .” In their award, the arbitrators held that the law made it “a job duty and condition of continued employment” for an employee to refrain from participating in a strike; and made it a violation of federal law for the employer “to continue in a position of employment therein one who so participates in a strike.”

Source: National Arbitration Award (Unnumbered), Arbitrators D. Kornblum, et al., dated May 5, 1979.

National Arbitrator Richard Mittenthal found that the wearing of “No Contract – No Work” buttons on postal premises during the final weeks of contract negotiations was a call for illegal strike action in the event the deadline passed without a new contract. He ruled that the prohibition of the wearing of such buttons in these circumstances was “fair, reasonable and equitable” within the meaning of Article 19.

Source: National Arbitration Award H8C-2W-C 34408, Arbitrator R. Mittenthal, dated November 1, 1983.

### Section 18.2

The Union or its local Unions (whether called Area Locals or by other names) will take reasonable action to avoid such activity and where such activity occurs, immediately inform striking employees they are in violation of this Agreement and order said employees back to work.

The Union will take reasonable actions to prevent or avoid strikes.

**Question:** If members of a local union strike or attempt a slowdown, must Union officers inform the members that they are in violation of the Agreement and order them back to work?

**Answer:** Yes. The Union or its local Unions will take reasonable action to avoid such activity and where such activity occurs will immediately inform striking employees that they are in violation of the Agreement and order said employees back to work.

### **Section 18.3**

It is agreed that the Union or its local Unions (whether called Area Locals or by other names) which comply with the requirements of this Article shall not be liable for the unauthorized action of their members or other postal employees.

While individual postal employees may be held responsible for their own actions, the Union or its local Unions that comply with Article 18 shall not be held liable for an employee's unauthorized actions.

### **Section 18.4**

The parties agree that the provisions of this Article shall not be used in any way to defeat any current or future legal action involving the constitutionality of existing or future legislation prohibiting Federal employees from engaging in strike actions. The parties further agree that the obligations undertaken in this Article are in no way contingent upon the final determination of such constitutional issues.

**(The preceding Article, Article 18, shall apply to Mail Handler Assistant employees.)**

Although Article 18 prohibits strikes in accordance with current federal law, it is not intended to prevent or be used to defeat any legislation and/or litigation that might change or alter the law.

## **ARTICLE 19 HANDBOOKS AND MANUALS**

### **Section 19.1**

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.

### **Section 19.2**

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Union at the national level at least sixty (60) days prior to issuance. The Employer shall provide the Union with the following information about the proposed changes: a narrative explanation of the purpose and impact on employees and any documentation concerning the proposed changes from the manager(s) requesting the changes. Proposed changes will be furnished to the Union by hard copy and, if available, by electronic file. At the request of the Union, the parties shall meet concerning such changes. If the Union requests a meeting concerning the proposed changes, those present at the meeting will include representatives of USPS Labor Relations and manager(s) who are knowledgeable about the purpose of the proposed changes and the impact of such proposed changes on employees. If the Union, after the meeting, believes the proposed changes violate this Agreement (including this Article), it may then submit the issue to arbitration in accordance with the arbitration procedure within ninety (90) days after receipt of the notice of proposed change. Within fifteen (15) days after the issue has been submitted to arbitration, each party shall provide the other with a statement in writing of its understanding of the precise issues involved, and the facts giving rise to such issues. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Union upon issuance.

**(The preceding Article, Article 19, shall apply to Mail Handler Assistant employees to the extent provided in the MOU Re: Mail Handler Assistant employees.)**

Article 19 provides that postal handbook and manual provisions directly relating to wages, hours, or working conditions shall contain nothing that conflicts with the National Agreement and are enforceable as though they were part of the National Agreement. Changes to handbook and manual provisions directly

relating to wages, hours, or working conditions may be made by management at the national level but may not be inconsistent with the National Agreement. When such changes are proposed, a narrative explanation of the purpose and impact on employees, along with related documentation, will be provided by the manager(s) requesting the changes. A challenge that such changes are inconsistent with the National Agreement or are not fair, reasonable, or equitable may be made only by the union at the national level, by submitting the dispute to arbitration within ninety (90) days after receipt of notice of the proposed changes.

Locally developed forms must be approved pursuant to Section 325 of the ASM and may not conflict with nationally developed forms found in Handbooks and Manuals.

While there have been numerous Step 4 grievances alleging violations of provisions within handbooks and manuals, the vast majority were remanded to Step 3 due to the fact that national interpretive issues could not be identified. However, the following issue was arbitrated at the national level:

National Arbitrator Garrett held 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.”

Source: National Arbitration Award NB-NAT 562, Arbitrator S. Garrett, dated January 19, 1977.

## ARTICLE 20 PARKING

### Section 20.1 Parking Program

The existing parking program will remain in effect.

### Section 20.2 Security

Recognizing the need for adequate security for employees in parking areas, and while en route to and from parking areas, the Employer will take reasonable steps, based on the specific needs of the individual location, to safeguard employee security, including, but not limited to, establishing liaison with local police authorities, requesting the assignment of additional uniformed police in the area, improving lighting and fencing, and, where available, utilizing mobile security force patrols.

Article 20 requires the Postal Service to continue the existing parking program and to take reasonable steps to safeguard employee security in parking areas.

The issue of the assignment of employee parking spaces is a proper subject for discussion during local implementation, pursuant to Article 30 (Section 30.2.Q). The intent of the provision of Article 30 (Section 30.2.Q) is to enable the parties to decide on the number of existing parking spaces, if any, which will be allocated to bargaining unit employees; it does not encompass the construction of new spaces. For example, local memoranda language may determine the number of existing spaces allocated, may assign spaces on a seniority or first-come, first-served or other basis, and may provide for parking in other available spaces.

**Question:** Currently, there is no free parking at the facility. Does management have to provide parking for its employees?

**Answer:** No. The contract only provides that the existing parking program will remain in effect.

**Question:** Where else is the assignment of employee parking spaces addressed?

**Answer:** Under Item Q of the Local Memorandum of Understanding implemented pursuant to Article 30, the parties have a right to negotiate over the assignment of existing parking spaces to employees. Any language adopted in Item Q is enforceable in keeping with the terms of Article 30, provided that it is not inconsistent or in conflict with the National Agreement.

### Section 20.3 Energy Usage

In order to reduce energy usage the Employer and the Union will promote the use of carpooling and public transportation, where available.

The Postal Service and the Union agree that reduction of air pollution by means of carpooling and the use of public transportation should be promoted. This subject is further addressed in the Memorandum of Understanding, Clean Air Act Committee, reprinted at the end of this article.

### Section 20.4 Parking

- A In postal facilities where parking is on a first-come/first-served basis, there will not be a parking space assigned to the designated agent of the Mail Handlers Union, except where such space has been previously negotiated.
- B In postal facilities where at least one space has been assigned to a postal employee (either bargaining or nonbargaining), a parking space shall be assigned to the designated agent of the Mail Handlers Union.
- C The provisions of B above will not apply to parking spaces assigned for the handicapped, nonpostal people (i.e., tenants), customers, postal vehicles, personal vehicles normally utilized in official postal duties or if a parking space is assigned adjunct to a security post. The above provisions are not intended to eliminate any parking space previously acquired by the designated agent of the Mail Handler Union through local negotiations.

The language of Section 20.4 outlines the conditions under which a parking space may be designated for the authorized representative of the union. Where parking is assigned on a first-come, first-served basis, a space is assigned to the designated union representative only where such assignment has been previously provided for in the local memorandum. Designation of the appropriate union representative will be made by the union.

**Question:** Must management always assign a parking space to the designated agent of the National Postal Mail Handlers Union?

**Answer:** No. In postal facilities where parking is on a first-come/first-served basis, there will not be a parking space assigned to the Union, except where such space has been previously negotiated. However, in postal facilities where at least one space has been assigned to a postal employee (either bargaining or non-bargaining), a parking space shall be assigned; this does not apply to parking spaces assigned for the handicapped, non-postal people (tenants), customers, postal vehicles, personal vehicles normally utilized in official postal duties, or if a parking space is assigned adjunct to a security post.

**Section 20.5 Committee**

The parking program is a proper subject for discussion at Labor-Management Committee meetings at the national level provided in Article 38.

**(The preceding Article, Article 20, shall apply to Mail Handler Assistant employees.)**

This language specifies that parking is a proper subject for discussion in labor-management meetings at the National level.

## ARTICLE 21 BENEFIT PLANS

### Section 21.1 Health Benefits

The method for determining the Employer bi-weekly contributions to the cost of employee health insurance programs under the Federal Employees Health Benefits Program (FEHBP) will be as follows:

- A. The Office of Personnel Management shall calculate the subscription charges under the FEHBP that will be in effect the following January with respect to self only, **self plus one**, and self and family enrollments.
- B. The bi-weekly Employer contribution for self only, **self plus one** and self and family plans is adjusted to an amount equal to **76% in 2017, 74% in 2018, and 73% in 2019** of the weighted average bi-weekly premiums under the FEHBP as determined by the Office of Personnel Management. **The adjustment begins on the effective date determined by the Office of Personnel Management in January 2017, January 2018, and January 2019.**
- C. The weight to be given to a particular subscription charge for each FEHB plan and option will be based on the number of enrollees in each such plan and option for whom contributions have been received from employers covered by the FEHBP as determined by the Office of Personnel Management.
- D. The amount necessary to pay the total charge for enrollment after the Employer's contribution is deducted shall be withheld from the pay of each enrolled employee. To the extent permitted by law, the Employer shall permit employees covered by this Agreement to make their premium contributions to the cost of each plan on a pre-tax basis, and shall extend eligibility to such employees for the U.S. Postal Service's flexible spending account plans for unreimbursed health care expenses and work-related child care and elder care expenses as authorized under Section 125 of the Internal Revenue Code.
- E. The limitation upon the Employer's contribution towards any individual employee shall be **79.25% in 2017, 77.25% in 2018, and 76% in 2019** of the subscription charge under the FEHBP in **2017, 2018, and 2019.**

Mail handlers are covered by the Federal Employees' Health Benefits Program (FEHBP), which enables each mail handler to choose among a number of health plans offering different levels and types of coverage. The premium amounts differ depending upon the FEHBP health insurance plan selected and the option chosen by the employee – self-only, **self plus one** or family. Thus, the actual

amounts paid as health insurance premium contributions by the employee and by the Postal Service may vary from one employee to another.

**Health Benefits Contribution Formula:** Article 21 specifies the formula for employer health benefits contribution levels. The method of paying health benefits for NPMHU employees changed as a result of the 1998 National Agreement. The change reflects adoption of the Federal Government's weighted average formula. This formula replaces the use of the Big-6 formula that had previously been in effect.

**Establishment of Subscription Charges:** The Office of Personnel Management (OPM) will calculate the subscription charges that will be in effect the following January for individual, **self plus one** and family plans.

**Postal Service Contribution:** The Employer contribution will be adjusted to 76% effective in January 2017, 74% effective in January 2018, and 73% effective in January 2019.

**Weighting of Plans:** The weighted average formula reflects the number of federal and postal employees who elect coverage in any given plan and option.

**Limitation on Postal Service Contribution:** The limitation on the Postal Service's contribution to any individual employee is 79.25% in 2017, 77.25% in 2018, and 76% in 2019 of the subscription charge in 2017, 2018 and 2019.

**Employee Contribution:** To the extent permitted by law, and unless waived by the individual mail handler, the portions of the health benefit plan premiums paid by mail handlers have been deducted on a pretax basis since April, 1994.

More information about FEHBP coverage can be found in the Employee and Labor Relations Manual Chapter 5, Section 520.

**Flexible Spending Accounts (FSA):** As provided in Section 21.1D, all mail handlers are eligible to participate in the Postal Service's flexible spending account plans, under which they can pay for unreimbursed health care expenses and work-related child care and elder care expenses with pretax dollars.

The maximum allowable contribution for mail handlers enrolling in the FSA for health care expenses **is set forth in the MOU re Flexible Spending Account, and is capped each year in the amount promulgated by the IRS.**

## Section 21.2 Life Insurance

The Employer shall maintain the current life insurance program in effect during the term of this Agreement.

Mail handlers are covered by the Federal Employees Group Life Insurance (FEGLI) program. More information about FEGLI can be found in the Employee and Labor Relations Manual Chapter 5, Section 530.

### **Section 21.3 Retirement**

The provisions of Chapters 83 and 84 of Title 5 U.S. Code, and any amendments thereto, shall continue to apply to employees covered by this Agreement.

Mail handlers are covered by federal retirement laws which govern retirement annuities. Each mail handler is covered by either the Civil Service Retirement System (CSRS) or by the Federal Employees Retirement System (FERS). More detailed information about these retirement programs is contained in the Employee and Labor Relations Manual Chapter 5, Sections 560 and 580.

### **Section 21.4 Injury Compensation**

Employees covered by this Agreement shall be covered by subchapter I of Chapter 81 of Title 5, and any amendments thereto, relating to compensation for work injuries. The Employer will promulgate appropriate regulations which comply with applicable regulations of the Office of Workers' Compensation Programs and any amendments thereto.

Mail handlers who sustain occupational injury or disease are entitled to workers' compensation benefits under the Federal Employees' Compensation Act (FECA), which is administered by the U.S. Department of Labor's Office of Workers' Compensation Programs (OWCP). More information about compensation benefits is contained in the Employee and Labor Relations Manual Chapter 5, Section 540, in USPS Handbook EL-505 (Injury Compensation) and in the relevant provisions of Title 5 of the United States Code and Titles 5 and 20 of the Code of Federal Regulations.

### **Section 21.5 Health Benefit Brochures**

When a new employee who is eligible for enrollment in the Federal Employee's Health Benefit Program enters the Postal Service, the employee shall be furnished a copy of the Health Benefit Plan brochure of the Union.

[See Memo, page 195]

## **MEMORANDUM OF UNDERSTANDING**

### **COMMITTEE ON BENEFITS**

It is hereby recognized and acknowledged by the United States Postal Service and the National Postal Mail Handlers Union, AFL-CIO, a Division of the Laborers' International Union of North America, that the benefits structure in many industries in the private sector is changing and evolving. In keeping with these circumstances, the parties agree to the establishment of a national level committee to study the current benefits structure as set forth in Article 21 of the 1998 Mail Handlers Division National Agreement. As a part of this study, the parties will also consider the feasibility of other benefit plans such as:

- (a) Child care;
- (b) Group legal services; and
- (c) Long term and short term disability insurance.

During the term of the **2016** Mail Handlers Division National Agreement, the Committee on Benefits will meet to study and discuss these subjects and, if mutual agreement is reached by the parties on any changes concerning the current benefit structure, appropriate amendments to Article 21 could be negotiated. It is understood such implementation could take the form of pilot or test sites at mutually agreed upon installations or Districts where a modified benefits structure could be further assessed.

The parties understand and agree that benefit plans which are currently mandated by statute will not be discussed by this committee.

#### **MEMORANDUM OF UNDERSTANDING FLEXIBLE SPENDING ACCOUNT**

**The United States Postal Service agrees the maximum allowable employee Flexible Spending Account (FSA) health care contribution will be the amount permitted by the Internal Revenue Service (IRS).**

**FSA contributions are now be capped each year in the amount promulgated by the IRS.**

## **ARTICLE 22 BULLETIN BOARDS**

The Employer shall furnish a bulletin board for the exclusive use of the Union, subject to the conditions stated herein, if space is available. The Union may place a literature rack in swing rooms, if space is available. Only suitable notices and literature may be posted or placed in literature racks. There shall be no posting or placement of notices or literature in literature racks except upon the authority of the officially designated Union representative.

**(The preceding Article, Article 22, shall apply to Mail Handler Assistant employees.)**

If space is available, the Postal Service is required to furnish a bulletin board for the exclusive use of the Union, but only suitable notices and literature may be posted.

In a case related to a posting containing the names of union non-members, National Arbitrator Howard Gamser stated:

“The Undersigned is in agreement that the language of the Agreement does not give the unions an unfettered right to post any material on the bulletin boards which they consider is suitable for such posting. That language reads, ‘...only suitable notices and literature may be posted or placed in literature racks.’ Management certainly, under this language, may challenge the contents of the proposed notices and literature on the grounds that such material is not suitable for publication in such fashion on post office premises and more particularly in work areas.

“When management does prohibit a posting on union bulletin boards on the grounds that the material is unsuitable, it is required to establish that it has just cause for reaching such a conclusion. The decision on suitability must be bottomed upon factual evidence that the posting will prove or has proven to be a cause of disruption or dissension and thus has had or will have an adverse impact upon productivity or efficiency.

“If the testimony and other documentation offered by Management did establish that this could be or was the consequence of such a posting, the Arbitrator would have to sustain management's right to prohibit such a posting. From within the four corners of the Agreement would come the authority for such a finding in the provisions of Article III dealing with management's exclusive right to maintain the efficiency of the operations. Resort to external law would not require that the unions be allowed to post inflammatory, prejudicial, or derogatory statements. It would be reasonable to assume that the results of such a posting would undermine management's ability to direct the work force and the enterprise efficiently

and productively. That would be the primary purpose of the prohibition and not to strip away the rights of employees to engage in certain protected concerted actions which are detailed under the provisions of Section 7 of the National Labor Relations Act.”

The Arbitrator noted that “[n]othing in (postal management’s) testimony supported a conclusion that the notices did, in fact, cause sufficient disruption or dissension so as to interfere with the orderly conduct of business, or that a failure to remove such notice would inevitably lead to such a result.”

Finally, in his award, Arbitrator Gamser sustained the grievance, and directed management “not to interfere with the posting of notices containing the names of non-members unless or until the Postal Service can prove that this material is unsuitable for posting because it has caused or will cause an adverse impact upon the ability of postal authorities to direct the work force and to manage its operations efficiently and productively.”

Source: National Arbitration Award N3-W-0214, Arbitrator H. Gamser, dated July 14, 1981.

After that decision, pre-arbitration settlements were reached as follows:

“After a thorough discussion of the issue, it was agreed that the following would represent a full settlement of the cases in compliance with Arbitrator Gamser’s Award of case N8-W-0214. Management will not interfere with the posting of notices containing the names of non-members unless or until the Postal Service can prove that the material is unsuitable for posting because it has caused or will cause an adverse impact upon the ability of postal authorities to direct the work force and to manage its operations efficiently and productively.”

Source: Pre-arbitration Settlements H8C-NA-C 49, H8C-2B-C 9351, dated October 15, 1981.

**Question:** Can the Union place a literature rack in a postal facility?

**Answer:** Yes. The Union may place a literature rack in swing rooms, if space is available. Only suitable notices and literature may be placed in literature racks.

**Question:** Who has the authority to post or place notices or literature on Union bulletin boards or in Union literature racks?

**Answer:** Authority is given to the officially designated Union representative.

**Question:** May the Union post a listing of endorsements of political candidates for public office?

**Answer:** Yes. Management may not remove a document listing Union endorsements of candidates for public political office.

Source: Step 4 Grievance E90N-1E-C 93023117, dated December 16, 1993.

## **ARTICLE 23 RIGHTS OF UNION OFFICIALS TO ENTER POSTAL INSTALLATIONS**

Upon reasonable notice to the Employer, duly authorized representatives of the Union shall be permitted to enter postal installations for the purpose of performing and engaging in official union duties and business related to this Agreement. There shall be no interruption of the work of employees due to such visits and representatives shall adhere to the established security regulations.

**(The preceding Article, Article 23, shall apply to Mail Handler Assistant employees.)**

This article provides the authority for duly authorized union officials to enter postal installations for the purpose of performing their official union duties. Prior to entry the union official is responsible for providing reasonable notice to management.

It is the policy of the Postal Service that when union officials wish to enter postal facilities other than the one where they are employed, they shall notify the employer at the same organizational level as the union official, i.e. National Officers or representatives notify Headquarters Labor Relations, Regional representatives notify Area Labor Relations, and local officers or representatives notify local management.

This article establishes the right of NPMHU officials to enter postal installations for any official purpose related to collective bargaining. Step 4 settlements regarding this provision have established that:

- High mail volume on a particular day is not a legitimate reason to prevent union officials from entering a facility.

Source: Step 4 Grievance NC-S-8831, dated November 14, 1977.

- There should be no unreasonable delays in granting a requesting union official access to a postal facility.

Source: Step 4 Grievance NC-C 10535, dated March 28, 1978.

- Normally, reasonable notice would not be required in writing. A telephone call to an appropriate management official would be sufficient.

Source: Step 4 Grievance H1N-5C-C 1479, dated June 25, 1982.

## **ARTICLE 24 EMPLOYEES ON LEAVE WITH REGARD TO UNION BUSINESS**

### **Section 24.1 Continuation of Benefits**

Any employee on leave without pay to devote full or part-time service to the Union shall be credited with step increases as if in a pay status. Retirement benefits will accrue on the basis of the employee's step so attained, provided the employee makes contributions to the retirement fund in accordance with current procedure. Annual and sick leave will be earned in accordance with existing procedures based on hours worked.

### **Section 24.2 Leave for Union Conventions**

- A Full or part-time employees will be granted annual leave or leave without pay at the election of the employee to attend National, State and Regional Union Conventions (Assemblies) provided that a request for leave has been submitted by the employee to the installation head as soon as practicable and provided that approval of such leave does not seriously adversely affect the service needs of the installation. Such requests will not be unreasonably denied.
- B If the requested leave falls within the choice vacation period and if the request is submitted prior to the determination of the choice vacation period schedule, it will be granted prior to making commitments for vacations during the choice period, and will be considered part of the total choice vacation plan for the installation, unless agreed to the contrary at the local level. Where the specific delegates to the Convention (Assembly) have not yet been determined, upon the request of the Union, the Employer will make provision for leave for these delegates prior to making commitments for vacations.
- C If the requested leave falls within the choice vacation period and the request is submitted after the determination of the choice vacation period schedule, the Employer will make every reasonable effort to grant such request, consistent with service needs. Such requests will not be unreasonably denied.

**(The preceding Article, Article 24, shall apply to Mail Handler Assistant employees.)**

Types of leave for union business include: (1) leave for union employment, (2) leave for union conventions, and (3) leave for other union activities.

Section 24.1 addresses leave from postal employment taken because of a full or part-time job with the local or national union. Section 24.1 guarantees that such employees on leave from postal employment continue to accrue retirement credit (so long as payment is made) and earn credit toward step increases. Employees working a part-time job with the union continue to earn annual and sick leave in accordance with existing procedures based on the hours that they work for the Postal Service.

Section 24.2A requires management to approve annual leave or leave without pay (LWOP), at the employee's election, to a bargaining unit employee who will attend a national, state or regional union convention as a delegate provided that a request for leave has been submitted by the employee to the installation head as soon as practicable. Management must grant such leave unless the leave would "seriously adversely affect the service needs of the installation." This is an exception to the general rule that the granting of LWOP is at the discretion of management, subject to the provisions of ELM, Section 514.

Section 24.2B establishes three rules as follows:

- A bargaining unit employee who requests annual leave or leave without pay to attend a union convention will receive priority consideration over employees requesting vacation leave, if the request is submitted prior to the determination of the vacation schedule.
- Such leave to attend conventions will be counted toward the "quota" of employees that must be given leave during that period, unless the local parties agree to the contrary.
- The union may reserve a specified number of "slots" during the choice vacation period for convention purposes, even if the names of delegates are not yet known. Where the determination of the choice vacation period schedule precedes the Union's determination of who the actual delegates will be, the Union may request that a certain number of slots be allocated for convention delegates. This number would then be included in the number of slots allowed during the period, unless the local parties agree to the contrary.

Section 24.2C provides that management will make every reasonable effort to grant the employee(s) leave request to attend union conventions that fall within the choice vacation period, even though the request is submitted after the determination of the choice vacation period. Management is obligated to honor all advance commitments for granting annual leave pursuant to Article 10, Section .4D, however, and therefore should not cancel any previously approved leave in order to grant convention leave.

Article 30, Section .2 lists two items for local implementation which involve leave for union activities and could affect the application of the above provisions. The items are as follows:

Item G: Whether jury duty and attendance at National or State Conventions shall be charged to the choice vacation period. Under this item the parties at the local level may settle on language to alter the effect of Section 24.2B under which leave for union conventions during the choice vacation period is counted toward the percentage off provided for in Item H.

Item R: The determination as to whether annual leave to attend Union activities requested prior to determination of the choice vacation schedule is to be a part of the total choice vacation plan. “Union Activities” in this item differ from the “national and state conventions” addressed by Item G. “Union Activities” may include a wide variety of union programs other than conventions, for example, legislative rallies, educational seminars or conferences.

## **ARTICLE 25 HIGHER LEVEL ASSIGNMENTS**

### **Section 25.1 Definitions**

Higher level work is defined as an assignment to a ranked higher level position, whether or not such position has been authorized at the installation.

Additional provisions governing higher level assignments are set forth in Employee and Labor Relations Manual (ELM) Section 422.4, which is made applicable to mail handlers by ELM Section 423(d).

The higher level positions in the Mail Handler craft are listed in Article 12 (Section 12.2H).

Additionally, as outlined in the Memorandum of Understanding reprinted on page 25-4, mail handlers certified by the PEDC and serving as On-the-Job Instructors are compensated at the MH-5 rate for the time that they spend performing in that capacity.

Level 4 mail handlers operating powered industrial equipment, including powered walk-behind forklifts, are entitled to higher level compensation for the period of such operation.

Source: Letter from Director, Office of Contract Administration, dated May 13, 1986.

The determination of whether the performance of certain specific duties contained in a higher level position constitutes the performance of higher level work has been addressed in several national arbitration awards.

Arbitrator Gamser ruled that consideration must be given to whether or not the core elements or the disparate key duties of the higher level position are being performed. Arbitrator Garrett ruled that "the assignment of an employee to perform some particular duty which is also performed by a higher level position, does not necessarily constitute assignment to such higher level position for purposes of Article XXV." However, in the same decision, Arbitrator Garrett also concluded that, when a lower level employee is assigned by management at any time – even if only for part of a tour – to replace a higher level employee in performing required duties within the scope of the higher level position, then the lower level employee is entitled to higher level pay. The same principle also applies in any instance where the lower level employee is assigned to augment the normal force of higher level employees, as long as the lower level employee is expected to handle all of the higher level duties which may be required on that tour.

Sources: National Arbitration Award AB-W-1520, Arbitrator H. Gamser, dated October 25, 1975; National Arbitration Award AC-NAT-6743, Arbitrator S. Garrett, dated May 25, 1977.

### **Section 25.2 Higher Level Pay**

An employee who is detailed to higher level work shall be paid at the higher level for time actually spent on such job. An employee's higher level rate shall be determined as if promoted to the position. An employee temporarily assigned or detailed to a lower level position shall be paid at the employee's own rate.

[See Memo, page 194]

As the employee's higher level rate is determined as if he/she had been promoted to the position, the employee receives credit for the time on detail for purposes of attaining the next step.

Source: ELM 422.441

Part-time flexible employees are paid at the part-time flexible hourly rate for the higher level position.

Source: ELM 422.431

**In the event an MHA is temporarily assigned to a higher level position, such employee will be paid at the higher level only for the time spent on the job.**

**Source: MOU re Mail Handler Assistant Employees**

### **Section 25.3 Written Orders**

Any employee detailed to higher level work shall be given a written management order, stating beginning and approximate termination, and directing the employee to perform the duties of the higher level position. Such written order shall be accepted as authorization for the higher level pay. The failure of management to give a written order is not grounds for denial of higher level pay if the employee was otherwise directed to perform the duties.

Normally, employees are notified of their assignment to higher level work by receipt of PS Form 1723, Assignment Order. However, the failure of management to provide a Form 1723 or other written order is not grounds for denial of higher level pay if the employee was otherwise directed to perform the duties.

For employees detailed to temporary supervisory positions (204b), local management must provide copies of Form 1723, showing the beginning and ending times of the detail period, to the local union in advance of the detail or modification thereto.

Source: Article 12 (Section 12.3B12.)

### **Section 25.4 Higher Level Details**

Detailing of employees to higher level bargaining unit work in each craft shall be from those eligible, qualified and available employees in each craft in the immediate work area in which the temporarily vacant higher level position exists. However, for details of an anticipated duration of one week (five working days within seven calendar days) or longer to those higher level craft positions enumerated in this Agreement as being permanently filled on the basis of promotion of the senior qualified employee, the senior, qualified, eligible, available employee in the immediate work area in which the temporarily vacant higher level position exists shall be selected.

This section sets forth the rules for filling temporarily vacant, bargaining unit, higher level positions. Employees detailed to higher level work shall be from among eligible, qualified and available employees in the immediate work area in which the higher level vacancy exists. The specific rules governing which employee is selected depend upon the duration of the vacancy.

As long as the employee is qualified to perform the required duties and is paid at the higher level, management may require a non-volunteer to work a bargaining unit assignment because of a special skill requirement or other operational consideration.

**When the opportunity exists for higher level assignment, the principle of preference for career employees over MHAs should be utilized.**

**Source: MOU re Mail Handler Assistant Employees**

### **Section 25.5 Leave Pay**

A Leave pay for employees detailed to a higher level position will be administered in accordance with the following:

A1 Employees working short-term on a higher level assignment or detail will be entitled to approved sick and annual paid leave at the higher level rate for a period not to exceed three days.

A2 Short-term shall mean an employee has been on an assignment or detail to a higher level for a period of 29 consecutive workdays or less at the time leave is taken and such assignment or detail to the higher level position is resumed upon return to work. All short-term assignments or details will be automatically canceled if replacements are required for absent detailed employees.

A3 Long-term shall mean an employee has been on an assignment or detail to the higher level position for a period of 30 consecutive workdays or longer at the time leave is taken and such assignment or detail to the higher level position is resumed upon return to work.

B Terminal leave payments resulting from death will be paid at the higher level for all employees who are assigned or detailed to higher level assignments on their last workday.

This section provides that a mail handler who works a higher-level detail for 29 consecutive working days or less and who resumes the detail upon return to work will receive sick or annual leave paid at the higher rate, but only for a period not to exceed 3 days for each occurrence. If a replacement for the employee on such a short-term detail is needed, the detail is automatically canceled.

A mail handler on a long-term temporary higher level assignment, defined as an assignment to the higher level position for a period of 30 consecutive workdays or longer at the time leave is taken, is entitled to have annual and sick leave paid at the higher level rate for the full period of approved leave, provided that the employee resumes the detail assignment upon returning to work.

In applying the definition of a workday in Article 8 (Section 8.1), Arbitrator Gamser ruled that an employee must work at least eight (8) hours per day on each of the 30 days prior to taking annual leave in order to be considered to be on a long-term detail.

Source: National Arbitration Award H8C-5F-C 4333, Arbitrator H. Gamser, dated July 27, 1981.

**Question: Is an MHA who is assigned to a higher level position entitled to higher level pay if scheduled for annual leave during the higher level detail?**

**Answer: No, the MHA will be paid at the higher level only for the time actually spent on such job.**

In addition to the provisions for annual and sick leave outlined above, ELM 422.432 provides the following direction regarding holiday leave and worked pay:

ELM 422.432:

e. *Holiday Leave Pay.* Full-time employees are paid for the holiday at the rate of the higher level, provided that they perform higher level service both on the workday preceding and on the workday following the holiday. Otherwise, the employee is paid for the holiday at the rate appropriate for her or his regular position.

f. *Holiday Worked Pay.* If an employee performs authorized service at the higher grade on a holiday, the employee is paid at the rate for the higher grade position, in addition to holiday leave pay.

### MEMORANDUM OF UNDERSTANDING

#### HIGHER LEVEL PAY FOR TEMPORARY DETAILS

When level 4 mail handlers are temporarily detailed to level 5 mail handler duties, higher level pay will be designated to the same step within level 5 as the employees occupy in their level 4 duty assignments.

This MOU provides that when level 4 mail handlers are detailed to level 5 duties, they are paid higher level at the same step as that which they would have occupied if they had remained at level 4.

### MEMORANDUM OF UNDERSTANDING

#### ON-THE-JOB INSTRUCTORS COMPENSATION

The U.S. Postal Service and the National Postal Mail Handlers Union, AFL-CIO, a Division of the Laborers' International Union of North America, agree that employees in the mail handler craft who are certified by the PEDC to act as on-the-job instructors will be compensated **at one level higher pay grade than their current bid position** while performing in that capacity.

Mail handlers who are certified by the PEDC and who serve as On-the-Job Instructors are compensated **at one level higher than their current bid position** for the time that they spend performing in that capacity. **A mail handler with a Level 4 bid position would be paid at the Level 5 rate when performing in that capacity. A mail handler with a Level 5 bid position would be paid at the Level 6 rate.**

**Question:** When is a mail handler who is temporarily disabled but nonetheless bids for and is awarded a higher level duty assignment entitled to receive higher level pay?

**Answer:** An employee who is temporarily disabled is permitted to bid for and be awarded a higher level mail handler duty assignment in accordance with the Memorandum of Understanding on Light Duty Bidding found in the 1998 National Agreement. Such an employee will not receive higher level pay, however, until he or she is physically able to, and actually does, perform work in the bid-for higher level position.

Source: Memorandum of Understanding Re Light Duty Bidding.

## **ARTICLE 26 UNIFORM AND WORK CLOTHES**

### **Section 26.1 Uniform and Work Clothes Administration**

All employees who are required to wear uniforms or work clothes shall be furnished uniforms or work clothes or shall be reimbursed for purchases of authorized items from duly licensed vendors. The current administration of the Uniform and Work Clothes Program shall be continued unless otherwise changed by this Agreement or the Employer.

Since the early 1970s, mail handlers have not been ‘issued’ work clothes or the contract uniform. Instead, employees are provided with an annual allowance with which to purchase these items.

Eligibility for work clothes and contract uniforms is more clearly defined in Subchapter 930 of the Employee and Labor Relations Manual (ELM). Only full time employees are eligible for work clothes or contract uniforms.

ELM, Subchapter 930, Work Clothes and Uniforms, identifies employees who are entitled to work clothes, regular uniforms or contract uniforms. The applicable provision of ELM 931.13 as it relates to the mail handler craft is reprinted below:

- c. Type 3 — vehicle maintenance, custodial maintenance, mail handler, BMEU, and clerical employees eligible under 932.12 and 932.13.

See also the letter regarding gender-specific garments reprinted at the end of this Article.

### **Section 26.2 Contract Program Administration**

Employees who are currently furnished uniforms pursuant to the contract program shall continue to be so entitled. Such uniforms shall be issued in a timely manner. The allowance to Mail Handlers under this program shall be as follows:

**\$170 effective May 21, 2016**  
**\$174 effective May 21, 2017**  
**\$179 effective May 21, 2018**  
**\$183 effective May 21, 2019**

Each increase shall become effective on the employee’s anniversary date following the effective date of change.

The applicable provision of the ELM is:

### 932.12 Contract Uniforms

The Postal Service has authorized uniforms for mail handlers, custodial maintenance, vehicle maintenance employees, and certain full-time employees in the Business Mail Entry Unit (BMEU) in CAG A-J post offices who meet certain criteria. To be eligible for uniforms under the contract uniforms program, employees must (a) be in public view 4 hours a day for 5 days a week or (b) be in public view not less than 30 hours a week in combined total time. Eligible employees are:

- a. *Mail Handlers and Group Leaders (Mail Handlers)*. Those who are assigned to dock areas, platforms, and other locations and meet the 4-hour-a-day or 30-hour-a-week criteria.

### Section 26.3 Annual Allowance

The current Work Clothes Program will be continued for those full-time employees who have been determined to be eligible for such clothing based on the nature of work performed on a full-time basis in pouching and dispatching units, parcel post sorting units, bulk mail sacking operations, and ordinary paper sacking units. The Employer will provide eligible employees with an annual allowance to obtain authorized work clothes on a reimbursable basis from licensed vendors as follows:

**\$86 effective May 21, 2016**  
**\$88 effective May 21, 2017**  
**\$90 effective May 21, 2018**  
**\$93 effective May 21, 2019**

Each increase shall become effective on the employee's anniversary date following the effective date of change.

Employees in the work clothes program may purchase and wear the reimbursable items at their discretion. This program is intended to mitigate the wear and tear of the employee's personal clothing. The applicable provision of the ELM is:

### 932.13 Work Clothes

This program is separate from the contract uniform program. It is for employees who are not presently eligible for uniforms or contract uniforms. Affected are certain mail handlers, maintenance employees, motor vehicle employees, and clerical employees involved full time in pouching and dispatching units, parcel post sorting units, bulk mail sacking operations, and ordinary paper sacking units:

c. Mail Handlers — full-time mail handlers working in the following areas:

- (1) Ordinary paper sacking units.
- (2) Parcel post units (dumping of sacks or manual separation of sacks).
- (3) Platform (dock) operations.
- (4) Pouch dumping units.
- (5) Sack dumping units.

**Question:** Where is there a list of authorized uniform items?

**Answer:** The uniform items authorized for mail handlers are listed in Section 933.3 of the ELM, entitled “Type 3 Uniform Items,” and currently include a jacket, jacket liner, sweatshirt, sweater, vest, shirt, trousers, coveralls, headgear, and shoes.

Source: ELM Chapter 9, Section 933.3.

**Question:** When do the allowances for work clothes and contract uniforms take effect?

**Answer:** Allowances generally take effect on the earliest date a full-time employee is authorized to wear the work clothes or contract uniform following completion of the 90-day probationary period. This date is known as the employee’s anniversary date for purposes of work clothes or contract uniform allowances. Adjustments may be made for transfers and for certain absences during the allowance year as set forth in the ELM, Section 935.

Source: ELM Chapter 9, Section 935.

John F. Hegarty  
National President  
National Postal Mail Handlers Union  
500 Connecticut Avenue, NW, Suite 500  
Washington, DC 20036-4304

Dear Mr. Hegarty:

During negotiation of the 2006 National Agreement, we agreed to the following:

Article 26: The U.S. Postal Service and the National Postal Mail Handlers Union will jointly explore the availability of gender-specific garments for the mail handler work clothes program.

Valerie E. Martin, Manager  
Contract Administration, NPMHU  
U.S. Postal Service

Currently, the work clothes program provides only male and unisex garments. The parties have committed to jointly explore the availability of gender-specific garments.

## **ARTICLE 27 EMPLOYEE CLAIMS**

### **Section 27.1 Claim Filing**

Subject to a \$10 minimum, an employee may file a claim within fourteen (14) days of the date of loss or damage and be reimbursed for loss or damage to his/her personal property except for motor vehicles and the contents thereof taking into consideration depreciation where the loss or damage was suffered in connection with or incident to the employee's employment while on duty or while on postal premises. The possession of the property must have been reasonable, or proper under the circumstances and the damage or loss must not have been caused in whole or in part by the negligent or wrongful act of the employee. Loss or damage will not be compensated when it resulted from normal wear and tear associated with day-to-day living and working conditions.

### **Section 27.2 Claim Adjudication**

Claims should be documented, if possible, and submitted with recommendations by the Union steward to the Employer at the local level. The Employer will submit the claim, with the Employer's and the steward's recommendation within 15 days, to the District office for determination. The claim will be adjudicated within thirty (30) days after receipt at the District office. An adverse determination on the claim may be appealed pursuant to the procedures for appealing an adverse decision in Step 3 of the grievance-arbitration procedure. A decision letter denying a claim in whole or in part will include notification of the Union's right to appeal the decision to arbitration. The District office will provide to the Union's Regional Representative a copy of the denial letter, the claim form, and all documentation submitted in connection with the claim. The installation head or designee will provide a copy of the denial letter to the steward whose recommendation is part of the claim form.

**(The preceding Article, Article 27, shall apply to Mail Handler Assistant employees.)**

Article 27 provides for the filing of a claim for reimbursement from the Postal Service should the employee lose or damage personal property while on duty or on postal premises. To file a claim the loss or damage must be a \$10.00 minimum and meet all of the following requirements:

- Connection with or incident to employment while on duty or on postal premises.
- Possession must have been reasonable or proper under the circumstances.
- Loss or damage was not caused in whole or in part by negligent or wrongful

act of the employee.

- Loss or damage did not result from normal wear and tear associated with day-to-day living and working conditions.
- Does not involve loss or damage to privately owned motor vehicle and/or contents thereof.

**Personal property:** The property must be “personal property.” This includes cash, jewelry, clothing or uniforms, as well as other privately owned items that are worn or otherwise brought to work. Personal property does not include automobiles and the contents thereof. (See “automobile exclusion” below.)

**Reasonable possession at work and loss connected with employment:** Under Article 27, possession of the personal property at work must have been reasonable or proper under the circumstances, and the loss or damage must have been suffered “in connection with or incident to the employee’s employment while on duty or while on Postal premises.” These two requirements are often interrelated. In determining whether these requirements were met, arbitrators generally evaluate: (1) whether it was necessary for the employee to have the lost or damaged item in his or her possession at work, and (2) whether the item’s value was so great that the employee should not have risked losing or damaging it at work.

**Automobile exclusion:** Motor vehicles and their contents are excluded from Article 27 Employee Claims. However, if an automobile is damaged, the bargaining unit employee may seek recovery under the Federal Tort Claims Act. To initiate a Tort Claim an employee should complete and submit a Form 95. Note that the standard for establishing liability under the Tort Claims Act is different than the standard for reimbursement under Article 27, because they treat the issue of fault differently. The Postal Service must pay a claim under Article 27 if the possession was reasonable and necessary to the performance of the duties and if, in addition, the loss or damage was not caused in whole or in part by the negligent or wrongful act of the employee. This is true whether or not there was also negligence on the part of the Postal Service. However, to recover under the Tort Claims procedure the employee must establish that the damage was the fault of the Postal Service.

**Not caused by employee negligence:** The Postal Service need not pay a claim when a loss was caused in whole or in part by the negligent act of the employee. “Negligence” means a failure to act with reasonable prudence or care.

**Not normal wear and tear:** The loss or damage will not be compensated when it results from normal wear and tear associated with day-to-day living and working conditions.

**Depreciated value:** The amount of the loss claimed must reflect the depreciated value of the property.

**Fourteen days to file a claim:** Article 27 requires an employee to file a timely claim within 14 days after the loss or damage occurred. The employee is expected to know the proper procedures to file, including the time limits.

**Written claim:** In keeping with Section 641.52 of the Employee and Labor Relations Manual (ELM), PS Form 2146, Employee Claim for Personal Property, must be completed in its entirety (Section 1 by the employee, Section 2 by the union and Section 3 by supervisor) to document a claim. However, any written document received within the period allowed is treated as a proper claim if it provides substantiating information. Claims must be supported with evidence such as a sales receipt, a statement from the seller identifying the price and date of purchase, or a statement from a seller about the replacement value.

The procedures for filing an employee claim are as follows:

- Claim should be submitted to management with the recommendation of the appropriate shop steward and must be submitted within 14 days of the date of loss or damage.
- Management submits the claim, with the employer's and the steward's recommendations, to the District office within 15 days of receipt of the employee claim.
- District office will adjudicate claim within 30 days of receipt.
- If the decision is made to pay the claim, the employee will receive a letter advising that the claim is approved and a check is being processed. At that point the procedure ends.
- If the decision is made to modify or deny the claim, the employee will receive a letter indicating a denial or modification of the original claim. The letter will include the appeal procedures.
- The union has the option to appeal a modified or denied claim, pursuant to the procedures for appealing an adverse decision in Step 3 of the grievance-arbitration procedure.
- The District office will provide the union's Regional Representative a copy of the modified or denial letter, the claim form and all other documentation filed with the claim.
- The installation head or designee will provide a copy of the denial letter to the steward whose recommendation is part of the claim form.

- The parties do not meet to discuss the employee claims at steps 1, 2, or 3 of the grievance procedure.

## **ARTICLE 28 EMPLOYER CLAIMS**

### **Section 28.1 Statement of Principle**

The parties agree that continued public confidence in the Postal Service requires the proper care and handling of the U.S.P.S. property, postal funds, and the mails. In advance of any money demand upon an employee for any reason, the employee must be informed in writing and the demand must include the reasons therefor.

**Employer Claim:** An employer claim is a demand made by management on a bargaining unit employee for loss or damage of the mails, or damage to USPS property and vehicles.

This paragraph requires the Postal Service to inform an employee in writing in advance of the reasons for any money demand. Some arbitrators have held that failure to issue a letter of demand in advance constitutes reversible error.

In addition to the employee protections found in this Article, Employee and Labor Relations Manual (ELM) Section 437 sets forth procedures under which an employee may request a waiver of an employer claim. See the discussion of the waiver provisions at the end of this Article.

### **Section 28.2 Loss or Damage of the Mails**

An employee is responsible for the protection of the mails entrusted to the employee. Such employee shall not be financially liable for any loss, rifling, damage, wrong delivery of or depredation on, the mails or failure to collect or remit C.O.D. funds unless the employee failed to exercise reasonable care.

**Reasonable care:** This section provides that a bargaining unit employee shall not be financially liable for the loss or damage of mails unless the employee “failed to exercise reasonable care.”

### **Section 28.3 Damage to U.S.P.S. Property and Vehicles**

An employee shall be financially liable for any loss or damage to property of the Employer including leased property and vehicles only when the loss or damage was the result of the willful or deliberate misconduct of such employee.

**Willful or deliberate misconduct:** This section provides that a bargaining unit employee shall not be financially liable for the loss or damage to other USPS property, including vehicles, unless the loss or damage resulted from the “willful or deliberate misconduct” of the employee.

## **Section 28.4 Collection Procedures**

- A If a grievance is initiated and advanced through the grievance-arbitration procedure or a petition has been filed pursuant to the Debt Collection Act, regardless of the amount and type of debt, collection of the debt will be delayed until disposition of the grievance and/or petition has (have) been had, either through settlement or exhaustion of contractual and/or administrative procedures.

If a grievance is filed regarding a demand for payment or a petition is filed pursuant to the Debt Collection Act, such demand for payment is held in abeyance until final disposition of the grievance or petition regardless of the amount of the demand or type of debt.

- B No more than 15 percent of an employee's disposable pay or 20 percent of the employee's biweekly gross pay, whichever is lower, may be deducted each pay period to satisfy a postal debt, unless the parties agree, in writing, to a different amount.

**(The preceding Article, Article 28, shall apply to Mail Handler Assistant employees.)**

This provision sets absolute limits on the amount that the employer may deduct from an employee's pay in collection of a debt, unless the employee agrees otherwise, voluntarily and in writing.

### **Waiver of Claims:**

Many employer claims involve mistakes in which mail handlers are overpaid. Section 437 of the ELM provides, however, for the waiver of certain claims for erroneous payment of pay. In general terms, under the process set forth in ELM Section 437, the employee files Form 3074, Request for Waiver of Claim for Erroneous Payment of Pay, upon receipt of the Postal Service's letter of demand for "recovery of pay which was erroneously paid." The completed form should contain all of the information the mail handler may have concerning the overpayment, including a statement of the circumstances which the mail handler feels would justify a waiver of the claim – typically, that the mistake was the Postal Service's and was not connected in any way to what the mail handler did or did not do, and that it would be unfair to require repayment under the circumstances presented.

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 Eagan Accounting Service Center.

Under ELM Section 461.4, an employee's request for a waiver of a debt does not stay the collection process, which is dealt with further in the section entitled "Collection of Debts." However, if the waiver request is ultimately granted, the amount collected is refunded to the employee.

More specifically, ELM Section 437 states the purpose for which a waiver can be filed (Section 437.1) as well as definitions (Section 437.2) and the mechanics for filing a claim (Section 437.3). In addition, a review by the installation head and human resources is provided for in Sections 437.4 and 437.5 and Sections 437.6 and 437.7 complete the process. The provisions are as follows:

### **437 Waiver of Claims for Erroneous Payment of Pay**

#### **437.1 Purpose**

This part establishes procedures for (a) requesting a waiver of a claim made by the Postal Service against a current or former employee for the recovery of pay that was erroneously paid and (b) applying for a refund of money paid by or deducted from a current or former employee as a result of such a claim.

#### **437.2 Definitions**

Definitions relevant to waiver of claims for erroneous payment of pay include the following:

a. *Pay* - salary, wages, or compensation for services including all forms of premium pay, holiday pay, or shift differentials; payment for leave, whether accumulated, accrued, or advanced; and severance pay. Pay does not include rental allowances or payment for travel, transportation, or relocation expenses.

b. *Employee* - throughout 437, a *former* employee as well as a *current* employee.

c. *Applicant* - an employee (current or former) or an individual acting on behalf of the employee who applies for a waiver of a claim for overpayment of pay.

d. *Installation head* - the postmaster, manager, or director of a field facility or the head (or designee) of a Headquarters field unit where the employee is employed or was last employed.

### 437.3 **Submission of Request**

#### 437.31 **Expiration Date**

Waiver action may not be taken after the expiration of 3 years immediately following the date on which the erroneous payment of pay was discovered.

#### 437.32 **Form 3074**

The applicant requests a waiver of a claim or a refund of money paid as a result of a claim by submitting Form 3074, *Request for Waiver of Claim for Erroneous Payment of Pay*, in *triplicate* to the installation head. The completed Form 3074 must contain:

- a. Information sufficient to identify the claim for which the waiver is sought including the amount of the claim, the period during which the erroneous payment occurred, and the nature of the erroneous payment.
- b. A copy of the invoice and/or demand letter sent by the Postal Service, if available, or a statement setting forth the date the erroneous payment was discovered.
- c. A statement of the circumstances that the applicant feels would justify a waiver of the claim by the Postal Service.
- d. The dates and amount of any payments made by the employee in response to the claim.

#### 437.4 **Review by Installation Head**

The installation head investigates the claim and writes a report of the investigation on the reverse side of the Form 3074. The report should include the following data and/or attachments:

- a. All relevant facts or circumstances that are not described or are incorrectly described by the applicant on the Form 3074.
- b. An explanation of the cause of the overpayment.
- c. If available, a listing for each pay period in which an overpayment was made, of (1) the employee's pay rate, (2) the gross amount due the employee, and (3) the gross amount that was actually paid.
- d. A statement as to whether there is any indication of fraud,

misrepresentation, fault, or lack of good faith on the part of anyone having an interest.

e. A recommendation for approval or disapproval of the claim based upon review of the facts and circumstances.

f. A copy of the invoice or notice to the employee of the amount requested to be repaid to the Postal Service together with the Form 3074. If neither of these items is available, a statement establishing the discovery date of the Postal Service claim should be included.

g. Copies of pertinent Forms 50, *Notifications of Personnel Action*; and any correspondence having a bearing on the claims, obtained from the employee's official personnel folder and included with the Form 3074.

h. Any other information that would assist in making a determination of whether collection action to collect the claim would be against equity or good conscience and would not be in the best interest of the Postal Service.

#### **437.5 Review by Human Resources**

The installation head forwards the Form 3074 to the servicing Human Resources official who:

a. Reviews the file for accuracy and completeness.

b. Completes part III of Form 3074.

c. Adds any pertinent comments to the file.

d. Forwards the entire file to the Payroll Processing Branch of the Eagan Accounting Service Center.

#### **437.6 Action by Eagan Accounting Service Center**

The Eagan Accounting Service Center waives the claim if it can determine from a review of the file that all of the following conditions are met:

a. The overpayment occurred through administration error of the Postal Service. Excluded from consideration for waiver of collection are overpayments resulting from errors in time keeping, keypunching, machine processing of time cards or time credit, coding, and any typographical errors that are adjusted routinely in the process of current operations.

b. Everyone having an interest in obtaining a waiver acted reasonably under the circumstances, without any indication of fraud, misrepresentation, fault, or lack of good faith.

c. Collection of the claim would be against equity and good conscience and would not be in the best interest of the Postal Service.

### **437.7 Appeal of Disallowed Request**

#### **437.71 Appeal Procedure**

When a request for waiver has been partially or completely denied, the applicant may submit a written appeal to the Eagan Accounting Service Center within 15 days of receipt of the determination. The appeal letter should clearly indicate that the employee is appealing the disallowance of the waiver request and explain in detail the reasons why the employee believes the claim should be waived.

#### **437.72 Final Decision**

The Eagan Accounting Service Center will then forward the appeal, with the entire case file, to the applicable area Finance manager for area employees or to the manager of National Accounting at Headquarters for Headquarters and area office employees for a final decision. The area Finance manager or manager of National Accounting advises the employee concerned and the Eagan Accounting Service Center of his or her final decision. If necessary, the Eagan Accounting Service Center adjusts its records.

### **Collection of Debts:**

Subchapter 460 of the ELM provides the regulations to be applied to the collection of any debt owed to the Postal Service by current bargaining unit employees. Due to the importance of this subchapter, the provisions are reprinted below.

### **460 Collection of Postal Debts From Bargaining Unit Employees**

#### **461 General**

##### **461.1 Scope**

These regulations apply to the collection of any debt owed the Postal Service by a current postal employee who is included in any collective bargaining unit. If the circumstances specified in 462.32 apply to such

employees, 452.3 may also apply, and consequently 451.2, 451.5, and 451.7 as well.

#### **461.2 Debts Due Other Federal Agencies**

Regulations governing the collection, by involuntary salary offset, of debts owed by postal employees to federal agencies other than the Postal Service are specified in Handbook F-16, *Accounts Receivable*, Chapter 7.

#### **461.3 Definitions**

As used in this subchapter, the following terms have the same meaning ascribed to them in 451.4:

- a. Administrative salary offset.
- b. Court judgment salary offset.
- c. Current pay and disposable pay.
- d. Debt.
- e. Employee.
- f. Pay.
- g. Postmaster or installation head.
- h. Severe financial hardship.
- i. Waiver.

#### **461.4 Effect of Waiver Request**

If an employee requests a waiver of a debt, the recovery of which is covered by these regulations, that request does not stay the collection process. However, if the waiver request ultimately is granted, the amount collected must be refunded to the employee.

### **462 Procedures Governing Administrative Salary Offsets**

#### **462.1 Determination and Collection of Debt**

##### **462.11 Establishment of Accounts Receivable**

Depending upon the circumstances of a particular case, the determination of a debt, the collection of which is covered by this subchapter, may be made by an official in the field or at the Eagan Accounting Service Center (ASC). For payroll-related debts discovered in the field, Form 2240, *Pay, Leave, or Other Hours Adjustment Request*, must be submitted to the Eagan ASC. Payroll-related debts discovered at the ASC level must be reported on Form 2248, *Monetary Payroll Adjustment*. Other debts must be reported to the manager of the Postal Accounts Branch, on Form 1902, *Justification for Billing Accounts Receivable*. Regardless of the amount of the debt, it is the responsibility of the Eagan ASC to create a receivable for each debt and to forward an invoice to the postmaster or installation head at the facility where the debtor is employed. At the time a receivable is created, the ASC must ensure that the employee's records are flagged so that the final salary or lump sum leave payment for that employee is not made until the debt is paid.

#### **462.12 Collection by Postmaster or Installation Head**

Each postmaster or installation head is responsible for collecting, in accordance with these regulations, any debt owed to the Postal Service by an employee under his or her supervision. A postmaster or installation head may delegate his or her responsibilities under these regulations.

### **462.2 Applicable Collection Procedures**

#### **462.21 Right to Grieve Letters of Demand**

A bargaining unit employee or the employee's union has the right in accordance with the provisions of Article 15 of the applicable collective bargaining agreement to initiate a grievance concerning any letter of demand to challenge (a) the existence of a debt owed to the Postal Service, (b) the amount of such debt, (c) the proposed repayment schedule, and/or (d) any other issue arising under Article 28 of the applicable collective bargaining agreement. Care must be taken to ensure that any letter of demand served on an employee provides notice of the employee's right to challenge the demand under the applicable collective bargaining agreement.

#### **462.22 Right to Petition for Hearing**

Under the following circumstances, the statutory offset procedures in 452.3, including the right to petition for hearing after the receipt of a Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act, apply:

a. *Failure to Initiate a Grievance in Time.* If a bargaining unit employee or the employee's union does not initiate, within 14 days of the employee's receipt of a letter of demand, a grievance challenging (a) the existence of a debt owed to the Postal Service, (b) the amount of such debt, and/or (c) the proposed repayment schedule, and the Postal Service intends to proceed with the collection of the debt, the statutory offset procedures in 452.3 apply (see 462.32).

b. *Failure to Advance Grievance in Time.* If a bargaining unit employee or the employee's union initiates a grievance in time challenging (a) the existence of a debt owed to the Postal Service, (b) the amount of such debt, and/or (c) the proposed repayment schedule, but the employee's union, following receipt of a decision denying the grievance, does not advance the grievance to the next step of the grievance procedure within the time limits set forth in Article 15 of the applicable collective bargaining agreement, and the Postal Service intends to proceed with the collection of the debt, the statutory offset procedures in 452.3 apply (see 462.32).

c. *Partial Settlement of Grievance.* If a grievance challenging (a) the existence of a debt owed to the Postal Service, (b) the amount of such debt, and/or (c) the proposed repayment schedule is resolved at any stage of the grievance-arbitration procedure through a written settlement agreement between the Postal Service and the union under which the employee remains liable for all or a portion of the debt, and the Postal Service intends to proceed with the collection of the debt, the statutory offset procedures in 452.3 apply (see 462.32). If the employee petitions for a hearing under 452.336, the Postal Service is free to pursue collection of the full amount of the debt before the hearing officer, notwithstanding the settlement with the union. However, if any contractual issue is resolved at any stage of the grievance-arbitration procedure, the settlement of that issue is final and binding.

d. *Ruling of Nonarbitrability.* If an arbitrator rules that a grievance concerning any letter of demand is not arbitrable, and the Postal Service intends to proceed with the collection of the debt, the statutory offset procedures in 452.3 apply (see 462.32).

## **462.3 Statutory Offset Procedures**

### **462.31 Authority**

Under section 5 of the Debt Collection Act, 5 U.S.C. 5514(a) (1982), the Postal Service, after providing an employee with procedural due process, may offset an employee's salary in order to satisfy any debt due the Postal Service. Generally, up to 15 percent of an individual's "disposable pay" may be deducted in monthly installments or at "officially established pay

intervals,” except as provided by 462.42. A greater percentage may be deducted with the written consent of the individual debtor. If the individual’s employment ends before collection of the full debt, deduction may be made from subsequent payments of any nature due the employee.

#### **462.32 Initiation of Statutory Offset Procedure**

After (a) the 14 days referenced in 462.22a or the time limits referenced in 462.22b have passed, (b) any settlement agreement referenced in 462.22c has been signed, or (c) any nonarbitrability ruling referenced in 462.22d has been issued, and at least 30 calendar days before making an administrative offset under this authority, the postmaster or installation head, in accordance with 452.321, must provide the employee with (a) two copies of a Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act containing the information in 452.322, and (b) one copy of the procedures that govern hearings under the Debt Collection Act that are set forth at 39 CFR Part 961 (see Exhibit 452.322). The procedures in 452.33 governing the exercise of employee rights apply. The postmaster or installation head has discretion to agree to an alternative offset schedule, based on a showing of severe financial hardship, as outlined in 452.335.

#### **462.33 Hearing Officials Under 39 CFR Part 961**

In accordance with 39 CFR 961.3, administrative hearings under the Debt Collection Act may be conducted by any individual who is not under the control or supervision of the postmaster general and who is designated as a hearing official by the judicial officer.

#### **462.34 Limit of Right to Petition for Hearing**

If an arbitrator opens a hearing on the merits of a grievance concerning any letter of demand, the statutory offset procedures in 452.3 do not apply thereafter, unless the arbitrator makes a ruling of nonarbitrability (see 462.22d) or the Postal Service and the union negotiate a partial settlement of the grievance (see 462.22c).

#### **462.4 Collection of Debt**

##### **462.41 Stay of Collection of Debt**

Whenever a grievance concerning any letter of demand has been initiated in time, in accordance with Article 15 of the applicable collective bargaining agreement, and/or a petition for a hearing has been filed in time, in accordance with 462.22, regardless of the type and amount of the

debt, the Postal Service will stay the collection of the debt until after the disposition of the grievance and/or the petition, through settlement or exhaustion of the contractual and/or administrative remedies.

#### **462.42 Limit on Amount of Salary Offset to Collect Debt**

Except as specified in part 463, the maximum salary offset to collect a debt that is owed to the Postal Service is 15 percent of an employee's biweekly disposable pay, or 20 percent of the employee's biweekly gross pay, whichever amount is lower when the salary offset is started. A greater salary offset may be made if the employee agrees with the Postal Service, in writing, on such greater amount.

**There is no dispute between the parties that a money demand from current employees must be consistent with Article 28 of the National Agreement, Section 460 of the Employee and Labor Relations Manual, and any applicable law. The parties agree if a grievance is initiated and advanced through the grievance-arbitration procedure or a petition has been filed pursuant to the Debt Collection Act, regardless of the amount and type of debt, collection of the debt will be delayed until disposition of the grievance and/or petition has (have) been had, either through settlement or exhaustion of contractual and/or administrative remedies. No more than 15 percent of an employee's disposable pay or 20 percent of the employee's biweekly gross pay whichever is lower, may be deducted each pay period to satisfy a postal debt, unless the parties agree, in writing, to a different amount.**

**Source: Step 4 Grievance Q90M-4Q-C 95048706, dated April 19, 2011.**

#### **462.5 Implementing Offsets**

After the applicable procedural requirements have been followed, the postmaster or installation head must institute the collection process by completing the appropriate sections of Form 3239, *Payroll Deduction Authorization to Liquidate Postal Service Indebtedness* (see Exhibit 452.233).

#### **463 Court Judgment Salary Offsets**

##### **463.1 Authority**

In accordance with section 124 of Public Law 97-276 (October 2, 1982), 5 U.S.C. 5514 note (1982), the Postal Service may deduct up to one-fourth (25 percent) of an employee's "current pay" in monthly installments or at

officially established pay periods to satisfy a debt determined by a federal court to be owed to the Postal Service. The statute authorizes the deduction of a “greater amount” if necessary to collect the debt within the employee’s anticipated period of employment. If an individual’s employment ends before the full amount of the indebtedness has been collected, section 124 provides that deduction is to be made from later payments of any nature due the employee.

## **463.2 Applicable Collection Procedures**

### **463.21 General**

The requirements governing the collection of employer claims specified by a pertinent collective bargaining agreement are not applicable to the collection by salary offset of a Postal Service claim if a federal court has granted judgment upholding the debt.

### **463.22 Notice**

At least 15 calendar days before initiating an offset to collect a debt reflected by a federal court judgment, the postmaster or installation head must provide the employee with a copy of that judgment, as well as with written notice of the Postal Service’s intention to deduct 25 percent of the employee’s current pay each pay period until the judgment is satisfied. The letter (see Exhibit 453.21, Sample Letter of Salary Offsets Based on Federal Court Judgment) also must include a statement that indicates the approximate amount, duration, and starting date of the deductions. The letter and judgment generally should be hand delivered, and a dated, signed receipt of delivery obtained. However, if personal delivery is not possible, certified or Express Mail, return receipt requested, should be used.

### **463.23 Implementing Offsets**

The postmaster or installation head must initiate the collection process by completing the appropriate sections of Form 3239 no earlier than 15 calendar days after the employee’s receipt of the letter.

## **464 Multiple Offsets**

### **464.1 Administrative Salary Offsets**

By statute, administrative salary offsets under section 5 of the Debt Collection Act of 1982 are limited to no more than 15 percent of an employee’s disposable pay during any one pay period — whether the deductions are made to satisfy a debt owed the Postal Service, another

federal agency, or some combination of these (but see 462.42 for the alternative limit on amount of salary offset to collect a debt that is owed to the Postal Service). Generally, priority among competing administrative salary offset requests is determined by the order in which they are received. However, a request to collect a debt due the Postal Service must be given priority over other government agency offset requests, regardless of the date the postal offset request is received (see 464.4). If a collection request cannot be honored upon receipt, or can be honored only in part, the postmaster or installation head must notify the requesting postal or other government official, in writing, of the reasons for the delay or for the collection of a lesser amount than that requested and the approximate date the requested offsets can be implemented.

#### **464.2 Court Judgment Salary Offsets**

No more than 25 percent of an employee's current pay may be withheld to satisfy a debt determined by a federal court to be due the United States — whether the deductions are made to satisfy a debt owed the Postal Service, another federal agency, or some combination of these. Generally, priority among competing court judgment salary offset requests is determined by the order in which they are received. However, a request to collect a debt due the Postal Service must be given priority over other government agency offset requests regardless of the date the postal offset request is received (see 464.4). If a collection request cannot be honored upon receipt, or can be honored only in part, the postmaster or installation head must notify the requesting postal or other government official, in writing, of the reasons for the delay or for the collection of a lesser amount than that requested and the approximate date the requested offsets can be implemented.

#### **464.3 Administrative and Court Judgment Salary Offsets**

If the salary of a postal employee is the target of one or more of both types of offsets — administrative and court judgment — a combined total of no more than 25 percent will be withheld during any one pay period. However, in no case may the amount withheld in accordance with administrative salary offsets exceed 15 percent of current pay (but see 462.42 for the alternative limit on amount of salary offset to collect a debt that is owed to the Postal Service). As is generally the case with competing offsets of the same type and subject to section 464.4, priority between administrative salary offsets and court judgment salary offsets is determined by the order in which they are received.

#### **464.4 Priority of Postal Service Indebtedness**

If a postal employee is indebted to the Postal Service, that debt takes priority over any debt he or she may owe another federal agency, even if

the other agency's request for salary offsets was received first. Accordingly, if both the Postal Service and another agency request the maximum allowable deductions, collection of the other agency's debt must be interrupted or postponed until the entire postal debt is recovered. However, if an amount less than that requested by the other agency can be deducted in addition to the offsets requested by the Postal Service without exceeding the appropriate percentage ceiling, deductions for the lesser amount must be withheld and forwarded to the requesting agency along with an explanation for the smaller offsets.

#### **464.5 Garnishments**

Administrative salary offsets based on section 5 of the Debt Collection Act of 1982 and court judgment salary offsets based on section 124 of Public Law 97-276 are not, as a matter of law, considered garnishments. Rather, for purposes of determining an employee's "disposable earnings" under the Federal Consumer Credit Protection Act, 15 U.S.C. 1671, et seq., these withholdings are considered to be amounts required by law to be deducted. Accordingly, they should be deducted before the applicable garnishment ceilings are imposed and before deductions for garnishments are made.

#### **465 Action Upon Transfer or Separation**

##### **465.1 Withholdings From Any Amount Due**

If a postal employee whose wages are subject to offset transfers to another federal agency or separates from employment, the Postal Service applies any amount due the employee at the time of his or her separation to the debt owed the Postal Service. If the debt is still not satisfied, appropriate action as described in 465.2 or 465.3 should be taken.

##### **465.2 Transfer to Another Federal Agency**

If a postal employee whose wages are subject to offset transfers to another federal agency, and the full debt cannot be collected from amounts due the employee from the Postal Service, the Postal Service must request the former postal employee's new agency to continue offsetting the debtor's salary until the debt is satisfied. The request must specify the amount of the original debt, the amount collected by the Postal Service through salary offsets, the amount that remains to be collected, and the percentage of the debtor's disposable earnings or current pay that should be deducted each pay period. In addition, the Postal Service must certify that the former postal employee has been accorded all required rights of due process. When the Postal Service's request is sent to the

new employing agency, a copy also must be sent to the former employee at his or her home address.

#### **465.3 Collection of Debt Upon Separation**

If the full debt cannot be collected from amounts due the employee at the time of his or her separation, the manager of the Postal Accounts Branch must attempt to recover the debt from any available retirement or disability payments due the former employee in accordance with the provisions of 5 CFR 831, Subpart R, or 5 CFR 845, Subpart D (see Handbook F-16, *Accounts Receivable*, 743).

## **ARTICLE 29 LIMITATION ON REVOCATION OF OF-346**

### **Section 29.1 Revocation or Suspension of OF-346**

- A An employee's OF-346, Operator's Identification Card, may be revoked or suspended when the on-duty record shows that the employee is an unsafe driver.
- B Elements of an employee's on-duty record which may be used to determine whether the employee is an unsafe driver include, but are not limited to, traffic law violations, accidents or failure to meet required physical or operations standards.
- C The report of the Safe Driver Award Committee cannot be used as a basis for revoking or suspending an OF-346.
- D When a revocation, suspension, or reissuance of an employee's OF-346 is under consideration, only the on-duty record will be considered in making a final determination. An employee's OF-346 will be automatically revoked or suspended concurrently with any revocation or suspension of State driver's license and restored upon reinstatement. Such revocation or suspension of the State driver's license shall not prevent the employee from operating in-house power equipment, if the employee is otherwise qualified to do so. Every reasonable effort will be made to reassign such employee to non-driving duties. In the event such revocation or suspension of the State driver's license is with the condition that the employee may operate a vehicle for employment purposes, the OF-346 will not be automatically revoked. When revocation, suspension, or reissuance of an employee's OF-346 is under consideration based on the on-duty record, such conditional revocation or suspension of the State driver's license may be considered in making a final determination.

For many years the USPS issued a special postal "Operator's Identification Card" known as the OF-346 and before that, the SF-46. This form has been discontinued and has been replaced with a 'Certificate of Vehicle Familiarization and Safe Operation'. This certificate applies to the operation of motor vehicles and to the operation of powered industrial equipment.

In the Mail Handler Craft, this Article has its greatest application relative to the operation of powered industrial equipment. Operation of industrial equipment that is powered by electric motor (battery) or internal combustion (flammable gases) requires the operator to have an appropriately endorsed Certificate of Vehicle Familiarization and Safe Operation regardless of whether the operator walks behind or rides on the equipment to guide it.

Operators of powered industrial equipment do not have to possess a valid State driver's license. The policies that govern selection of these operators, therefore, do not contain the requirement to obtain a State driving abstract, compare it with the Table of Disqualification, or administer an initial road test.

Moreover, revocation or suspension of a State driver's license shall not prevent an employee from operating in-house power equipment, if the employee is otherwise qualified to do so.

- Rules regarding the suspension or revocation of driving privileges relative to powered industrial equipment are contained in the Powered Industrial Equipment Section of the driver training program entitled *Driver Selection, Orientation, Familiarization and Certification*, (Course 43513-00) issued in 1993. This training program replaced former Handbook EL-827, *Driver Selection, Testing and Licensing*. That section states:

“D.Suspension and Revocation

1. The driving privileges for powered industrial equipment may be suspended or revoked for the following reasons:
  - a. If a licensed physician finds that an employee's physical condition warrants such suspension or revocation;
  - b. If an employee continues to operate powered industrial equipment in an unsafe manner after being individually warned or instructed;
  - c. If an operator has been involved in two or more at-fault powered industrial equipment accidents within a 12-month period; or
  - d. If allowing the employee to continue operating powered industrial equipment may result in damage to USPS property, loss of mail or funds, or injury to the employee or others.”

In those circumstances where an employee operates a motor vehicle (see comments in Section 2.2), management may suspend or revoke an employee's driving privileges under certain circumstances:

- Automatically, concurrently with the suspension or revocation of the employee's state driver's license, unless the suspension or revocation by the state includes the condition that the employee may operate a vehicle for employment purposes. Automatic reinstatement of postal driving privileges must follow reinstatement of the state driver's license.

As noted above, such revocation or suspension of the State driver's license shall not prevent the employee from operating in-house power equipment, if the employee is otherwise qualified to do so.

- Additional rules regarding the suspension or revocation of driving privileges are contained in Section 1 (VI) of the management training program entitled *Driver Selection, Orientation, Familiarization and Certification*, issued in 1993. This handbook replaced former Handbook EL-827, *Driver Selection, Testing and Licensing*. Section 1(VI-B) states:

“VI Suspension and Revocation of Driving Privileges

B. For Unsafe Driving

1. An employee's driving privileges may be suspended or revoked when the on-duty record shows that the employee is an unsafe driver. Elements of an employee's on-duty record that may be used to determine whether the employee is an unsafe driver include, but are not limited to traffic law violations, accidents, or failure to meet required physical or operation standards.
2. When a suspension, revocation, or reissuance of an employee's driving privileges is under consideration, only the on-duty record may be considered when making the final determination. However, an employee's driving privileges will automatically be suspended or revoked concurrently with a suspension or revocation of State Driver's license and restored upon reinstatement. It is the responsibility of the employee to provide documentation that the State license has been reinstated. If such suspension or revocation includes the condition that the employee may operate a vehicle for employment purposes, the driving privileges will not be automatically suspended or revoked. When suspension, revocation, or reissuance of an employee's driving privileges is under consideration based on the on-duty record, such conditional suspension or revocation of the State driver's license may be considered in making the final determination.

C. In Case of Accident

1. Review of Driving Privileges. The employee's driving privileges are reviewed at the time of an accident by the employee's supervisor and/or another official in charge. There are no provisions for the automatic suspension of an employee's driving privileges based on the fact that the employee was involved in a vehicle accident. Rather, the circumstances surrounding each accident are assessed

at the time of the accident to determine whether a temporary suspension of driving privileges is warranted.

2. **Assessment of Circumstances.** The circumstances surrounding an accident that should be assessed include, but are not limited to, the employee's condition (shock, fatigue, alcohol/controlled substance impairment, or other related physical or emotional condition), the seriousness of the unsafe driving practices, if any, that result in the accident, and a determination by the supervisor as to whether the public's or the employee's safety would be jeopardized by allowing the employee to continue driving.
3. **Temporary Suspension.** If an immediate determination cannot be made based upon a review of the above, the employee's driving privileges may be withheld temporarily pending completion of the accident investigation. At this time a final decision to suspend, revoke or re-instate can be made. The length of time involved in withholding driving privileges pending investigation can vary in each case but must not exceed 14 days. Not later than 14 days, the employee's driving privileges must either be reinstated, suspended for a period of time not to exceed 60 days, or revoked, as warranted. If the decision is to suspend or revoke the employee's driving privileges, provide the employee, in writing, of the reason(s) for such action.
4. **Decision Criteria:** Decisions to suspend or revoke driving privileges are made after investigation and determination as to whether the driver was at fault (whether the driver's actions were the primary cause of the accident), the driver's degree of error, past driving and discipline records, and/or the severity of the accident. The quality or absence of prior training in a particular driving activity should be considered as well, and the employee's inability to meet USPS physical standards at the time of an accident is also a factor to be considered. The preventability or non-preventability of an accident as determined by the Safe Driver Award Committee is NOT a factor to be considered in the suspension or revocation of driving privileges. The decision of the Safe Driver Award Committee is for contest purposes only."

**Every Reasonable Effort to Reassign:** In the event an employee's driving privileges have been suspended or revoked, Article 29 provides that "Every reasonable effort will be made to reassign such employee to non-driving duties." This requirement is not contingent upon a mail handler making a request for non-driving duties. Rather, it is management's responsibility to seek to find suitable non-driving work.

## **Section 29.2 Issuance**

- A An employee shall be issued an OF-346 when such employee has a valid State driver's license, passes the driving test of the U.S. Postal Service, and has a satisfactory driving history.

In an APWU national arbitration case, with NPMHU and NALC intervention, Arbitrator Snow held that management is not prevented by the parties' collective bargaining agreement from granting driving privileges to employees who are not required to drive solely on the basis of their position or job description, if those employees otherwise are qualified to drive and meet internal requirements. He added that where management can show a local past practice of licensing Mail Handlers, Letter Carriers and others to drive five-ton and larger vehicles, such conduct continues to be permissible within the bounds of good faith. If it can be shown that local management has not conducted its operations in such a manner, the employer is limited to its prior course of conduct, unless the parties negotiate a different result.

Source: National Arbitration Award H7C-1K-C 31669, Arbitrator Carlton Snow, dated November 14, 1997.

- B An employee who has been issued an OF-346 for the operation of a motor vehicle must inform the supervisor immediately of the revocation or suspension of such employee's State driver's license

## **ARTICLE 30 LOCAL IMPLEMENTATION**

### **Section 30.1 Current Memoranda of Understanding**

Presently effective local memoranda of understanding not inconsistent or in conflict with this Agreement shall remain in effect during the term of this Agreement unless changed by mutual agreement pursuant to the local implementation procedure set forth below or, as a result of an arbitration award or settlement arising from either party's impasse of an item from the presently effective local memorandum of understanding.

Since the beginning of full postal collective bargaining in 1971, the contractual rights and benefits of bargaining unit employees have been negotiated at the national level. However, the implementation of certain provisions of the National Agreement has been left to the local parties on the basis of their particular preferences and circumstances; this period of “local implementation” has followed the negotiation of each National Agreement. The agreement reached by the local parties during this period is referred to as the Local Memorandum of Understanding (LMOU).

Section 30.1 provides that currently effective LMOU provisions, which are not in conflict or inconsistent with the National Agreement, remain in effect during the term of the new National Agreement unless the parties change them through local implementation or the related impasse procedures.

**Question:** If neither party invokes the local implementation process during the specified period, does the previous LMOU continue in effect?

**Answer:** Yes. Section 30.1 states that “presently effective local memoranda of understanding not inconsistent or in conflict with this Agreement shall remain in effect during the term of this Agreement unless changed by mutual agreement pursuant to the local implementation procedure set forth below. . .”

### **Section 30.2 Items for Local Negotiations**

There shall be a 30 consecutive day period of local implementation which shall occur within a period of 60 days commencing **March 1, 2017** on the 20 specific items enumerated below, provided that no local memorandum of understanding may be inconsistent with or vary the terms of this Agreement:

Local implementation takes place during a consecutive 30 day period selected by the local parties. That 30 day period is selected within a period of 60 days, which will commence under the **2016** National Agreement on **March 1, 2017**. The Memorandum of Understanding, Article 30 – Local Implementation Procedures,

reproduced hereunder, contains specific procedures for local implementation under the **2016** National Agreement.

## **MEMORANDUM OF UNDERSTANDING**

### **ARTICLE 30--LOCAL IMPLEMENTATION PROCEDURES**

It is hereby agreed by the United States Postal Service and the National Postal Mail Handlers Union, AFL-CIO, a Division of the Laborers' International Union of North America, that the following procedures will apply to the implementation of Article 30 during the **2016** local implementation period.

1. The thirty (30) consecutive day period for **2016** local implementation will commence, pursuant to agreement by the local parties, on or after **March 1, 2017** and terminate on or before **April 29, 2017**. If the local parties do not reach agreement on the dates for local implementation, the local implementation period shall be from **March 31, 2017** to **April 29, 2017**. Initial proposals must be exchanged within the first twenty one (21) days of the thirty (30) consecutive day local implementation period.

If neither party provides written notification of its intent to invoke the local implementation process on or before **March 15, 2017**, presently effective Memoranda of Understanding not inconsistent or in conflict with the **2016** National Agreement shall remain in effect during the term of this Agreement.

2. In the event that any issue(s) remain in dispute at the end of the thirty (30) consecutive day local implementation period, each party shall identify such issue(s) in writing. Initialed copies of this written statement and copies of all proposals and counterproposals pertinent to the issue(s) in dispute will be furnished by the appropriate local party to the appropriate management official at the **LR Service** Center of the Employer with copies to the Installation Head, local Union President and the Union's Regional Representative within fifteen (15) days after **April 29, 2017**. Inclusion of any matter in the written statement does not necessarily reflect the agreement of either of the parties that such matter is properly subject to local implementation.

3. The appropriate management official at the Area office and the Regional Union representative shall attempt to resolve the matters in dispute within seventy-five (75) days after **April 29, 2017**. The appropriate management official at the Area office and the Regional Union representative will have full authority to resolve all issues still in dispute.

4. If the parties identified in paragraph 3 above are unable to reach agreement at the Regional level by the end of the seventy-five (75) day period provided for above, the issue(s) may be appealed to final and binding arbitration by the Union

or the Vice President, Labor Relations, within twenty-one (21) days of the end of the seventy-five (75) day period. Any such appeal shall be given priority scheduling on the District Regular Contract Docket.

5. Where there is no agreement and the matter is not referred to the appropriate management official at the **LR Service** Center or to arbitration, the provision(s), if any, of the former Local Memorandum of Understanding shall apply unless inconsistent with or in conflict with new or amended provisions of the **20** National Agreement.

6. Where a dispute exists as to whether an item in the former Local Memorandum of Understanding is inconsistent or in conflict with the **2016** Mail Handlers National Agreement, such dispute will be processed in accordance with the procedures outlined in 2. through 4. above. Items declared to be inconsistent or in conflict shall remain in effect until four (4) months have elapsed from the conclusion of the local implementation period under the **2016** National Agreement.

This Memorandum of Understanding expires at 12 midnight **September 20, 2019**.

The Memorandum of Understanding provides specific dates for local implementation under the **2016** National Agreement, including establishment of a set 30-day implementation period in those instances where the local parties do not reach agreement, standardization of the dates for impassing the dispute to the Area/Regional level and, if resolution is not achieved at that level, for appeal to Regional level arbitration.

In an effort to assure timely resolution of impasse items resulting from local implementation under the **2016** National Agreement, appeals to Regional arbitration are given priority scheduling on the District Regular Contract Docket. Items declared in conflict or inconsistent remain in effect for four months after the conclusion of the local implementation period.

A National arbitration award has confirmed that the local parties do not have the right to make changes to the LMOU that are substantial, in character or scope, except during the specific 30-day implementation period. Where the local parties desire to make such interim changes in the LMOU, they must obtain joint agreement from the parties at the National level in advance.

Source: National Arbitration Award H7N-1F-C 39072, Arbitrator R. Mittenthal, dated June 2, 1995.

**The 20 Items:** Section 30.2 lists the 20 Items that the parties may discuss during the period of local implementation. The local parties are required to discuss any of these items which are raised by either party. This means that if one party raises one of the listed items, the other must discuss it in good faith.

These are “mandatory subjects” of discussion if raised during the period of local implementation. The local parties are free to discuss other subject areas as well, but neither party is required to discuss subjects other than the 20 items listed in Section 30.2. See further the discussion of the September 21, 1981 National Arbitration Award by Arbitrator R. Mittenthal under Section 30.3A below.

A Additional or longer wash-up periods.

Article 8 (Section 8.9) is the contractual provision that provides for wash-up time. Item A provides the opportunity to discuss locally additional or longer wash-up periods.

B Guidelines for the curtailment or termination of postal operations to conform to orders of local authorities or as local conditions warrant because of emergency conditions.

This item gives the local parties the opportunity to discuss and formulate guidelines for the curtailment of postal operations in case of an emergency.

C Formulation of local leave program.

D The duration of the choice vacation period.

E The determination of the beginning day of an employee’s vacation period.

F Whether employees at their option may request two selections during the choice vacation period, in units of either 5 or 10 days.

G Whether jury duty and attendance at National or State Conventions shall be charged to the choice vacation period.

H Determination of the maximum percentage of employees who shall receive leave each week during the choice vacation period.

I The issuance of official notices to each employee of the vacation schedule approved for such employee.

J Determination of the date and means of notifying employees of the beginning of the new leave year.

K The procedures for submission of applications for annual leave during other than the choice vacation period.

All of the above Items (C thru K) plus Item R cover the formulation of a local leave program. See generally Article 10. This program covers both choice and other-than-choice vacation.

- L Whether “Overtime Desired” lists in Article 8 shall be by section and/or tour.

Article 8 (Section 8.5B) contains the National Agreement language related to this item.

- M The number of light duty assignments to be reserved for temporary or permanent light duty assignment.
- N The method to be used in reserving light duty assignments so that no regularly assigned member of the regular work force will be adversely affected.
- O The identification of assignments that are to be considered light duty.

See Article 13 (Section 13.3).

- P The identification of assignments comprising a section, when it is proposed to reassign within an installation, employees excess to the needs of a section.

Article 12 (Section 12.6C4) is the provision related to this item. This item provides for the identification of sections for the purposes of administering the provisions of Article 12 (Section 12.6C4). If sections are not identified in accordance with this item the entire installation will be considered a section.

- Q The assignment of employee parking spaces.

The parties locally can identify procedures for the assignment of parking spaces; e.g. first come, first served. See generally Article 20.

- R The determination as to whether annual leave to attend Union activities requested prior to determination of the choice vacation schedule is to be part of the total choice vacation plan.

See discussion under Items C through K above.

- S Those other items which are subject to local negotiations as provided in the following Articles:

Article 12, Section .3B5

Relates to reposting of a duty assignment due to changes in duties or principal assignment area.

Article 12, Section .3C

Relates to posting and bidding on an installation-wide or other basis.

Article 12, Section .3E3f

Relates to the order of movement of full-time employees outside the bid assignment area.

Article 12, Section .4

Relates to the definition of a section.

Article 12, Section .6C4a

See Item P above.

Article 13, Section .3

See Items M through O above.

T Local implementation of this Agreement relating to seniority, reassignments and posting.

**Section 30.3 Grievance-Arbitration Procedure**

A All proposals remaining in dispute may be submitted to final and binding arbitration, with the written authorization of the Union or the Vice President, Labor Relations. The request for arbitration must be submitted within 10 days of the end of the local implementation period. However, where there is no agreement and the matter is not referred to arbitration, the provisions of the former local memorandum of understanding shall apply, unless inconsistent with or in conflict with this Agreement. The Employer may challenge a provision(s) of a local memorandum of understanding on “inconsistent or in conflict” grounds only by making a reasonable claim during the local implementation process that a provision(s) of the local memorandum of understanding is inconsistent or in conflict with new or amended provisions of the current National Agreement that did not exist in the previous National Agreement, or with provisions that have been amended subsequent to the effective date of the previous National Agreement. If local management refuses to abide by a local memorandum of understanding on “inconsistent or in conflict” grounds and an arbitrator subsequently finds that local management had no reasonable basis for its claim, the arbitrator is empowered to issue an appropriate remedy.

In the event of a mid-term change or addition in the National Agreement, local management may challenge a provision(s) of a local memorandum of understanding subsequent to the local implementation period, but only by making a reasonable claim that a provision(s) of a local memorandum of understanding is inconsistent or in conflict with the changed provision(s) of the National Agreement. The challenged provision(s) declared to be inconsistent or in conflict with the National Agreement shall remain in effect for 120 days from the date on which the Union is notified in writing of management's challenge or the date of an arbitrator's award dealing with management's challenge, whichever is sooner.

[See Memo, page 196]

The Memorandum of Understanding, Article 30 – Local Implementation Procedures, reprinted above, sets out the specific provisions for impasse of items remaining in dispute. Either party may impasse and submit to interest arbitration a provision in a LMOU that relates to one of the 20 items listed in Section 30.2. Neither party, however, has the right to resort to impasse arbitration over subject matters outside the 20 items.

Source: National Arbitration Award H0C-NA-C 3, Arbitrator R. Mittenthal, dated July 12, 1993.

The parties have agreed that the time limits for appeal to Regional level arbitration contained in the Memorandum of Understanding supersede the language found in this section. The ten day period provided for in Section 30.3 is overridden by the Memorandum of Understanding which provides 21 days.

Source: Letter from W. Flynn, NPMHU, to A. Wilson, USPS, dated June 19, 2002.

**Question:** If there is no agreement on a proposal as a result of local implementation, and the proposal is not referred to the Area/Regional level and/or to impasse arbitration, is the proposal thereby automatically adopted by the local parties?

**Answer:** No. Where there is no agreement, and the matter is not referred to the Area/Regional level or to arbitration, the provision(s), if any, of the former LMOU shall apply unless inconsistent or in conflict with new or amended provisions of the current National Agreement.

Management may challenge a local memorandum provision as in conflict or inconsistent only by making a reasonable claim during the local implementation process that a provision(s) of the LMOU is inconsistent or in conflict with new or amended provisions in the current National Agreement that did not exist in the previous National Agreement, or with provisions that have been amended

subsequent to the effective date of the previous National Agreement. If local management refuses to abide by the LMOU on “inconsistent or in conflict” grounds and an arbitrator subsequently finds that local management had no reasonable basis for its claim, the arbitrator is empowered to issue an appropriate remedy. When management declares an item to be in conflict and/or inconsistent during the local implementation period, the union has the burden to appeal that item under the impasse procedures. Management may cease to honor provisions of a LMOU which it deems to be in conflict or inconsistent with the National Agreement after four months have elapsed following the conclusion of the local implementation period.

Management may also make an in conflict or inconsistent challenge as a result of a mid-term change or addition to the National Agreement that is made subsequent to the local implementation period, but only by making a reasonable claim that a provision(s) of the LMOU is inconsistent or in conflict with the changed provision(s) of the National Agreement. In this circumstance, the local memorandum provision must remain in effect for 120 days from the date that management notified the union of the challenge or the date on which an arbitrator rules on the challenge, whichever is sooner.

The parties have agreed that the introduction of the CIM does not constitute “new or amended provisions” or “a mid-term change or addition” to the National Agreement and that, therefore, it cannot be used as a basis to declare an item in an existing Local Memorandum of Understanding inconsistent or in conflict with the National Agreement.

Arbitrator Garrett declared that a proposal which may seem to seek a result in conflict with the National Agreement, but which nonetheless seeks to deal with a genuine problem within the scope of Article 30, still may provide a basis for good faith negotiations. “Nothing in the present Article (XXX) authorizes a refusal to negotiate concerning a local proposal, on one of the subjects delineated in Paragraph (B) thereof.” However, “either party may and should resist agreement upon any compromise or alternate solution which would conflict with the National Agreement.”

Source: National Arbitration Award Impasse 78, Arbitrator S. Garrett, dated October 28, 1974.

While the parties may discuss and implement language which is outside the scope of the 20 items listed in Section 30.2, they are not required to do so. Arbitrator Mittenenthal ruled that it would take clear contractual language to prohibit the local parties from negotiating a clause on a subject outside the listed items and that no such language exists in Article 30. In this case, in which local management in Helena, MT had agreed to restrict the re-labeling of carrier cases to the regular carrier or T-6, the arbitrator ruled that the “exclusive right” provisions of Article 3 did not prevent local management from agreeing to “limit the assignment of particular work to particular employees. That was simply one

of the options available to it. Because this Helena clause was hence within Management’s powers, it can hardly be considered ‘inconsistent or in conflict with’ Article III rights.”

Arbitrator Mittenthal added that the local parties are free if they wish to expand their negotiating agenda to include subjects nowhere mentioned in Section 30.2, but that neither party can be required to negotiate any subject outside those listed.

Source: National Arbitration Award N8-W-0406, Arbitrator R. Mittenthal, dated September 21, 1981.

**B** An alleged violation of the terms of a memorandum of understanding shall be subject to the grievance-arbitration procedure.

Once the LMOU is signed and implemented, its provisions are enforceable through the grievance-arbitration procedures of Article 15. As noted above, items which are in conflict and/or inconsistent with new or amended provisions of the current National Agreement must be challenged by management during the local implementation period. Also, management may make an in conflict and/or inconsistent challenge as a result of a mid-term change or addition to the National Agreement.

**C** When installations are consolidated or when a new installation is established, the parties shall conduct a thirty (30) day period of local implementation, pursuant to Section 2. All proposals remaining in dispute may be submitted to final and binding arbitration, with the written authorization of the Union or the Vice President, Labor Relations. The request for arbitration must be submitted in accordance with the Memorandum of Understanding Re: Local Implementation.

This provision provides for the parties to conduct local implementation outside the period provided in Section 30.2 in those limited instances where installations are consolidated or a new installation is created.

**D** Where the Postal Service, pursuant to Section 3A, submits a proposal remaining in dispute to arbitration, which proposal seeks to change a presently-effective Local Memorandum of Understanding, the Postal Service shall have the burden of establishing that continuation of the existing provision would represent an unreasonable burden to the Postal Service.

This provision establishes the burden of proof required where management impasses an existing provision of a currently effective LMOU – that management “shall have the burden of establishing that continuation of the existing provision would represent an unreasonable burden to the Postal Service.” Note that the union does not bear the same burden when it seeks to change a presently effective LMOU provision.

### **Section 30.4 Local Memorandum of Understanding**

Subject to the local implementation provisions of this Article, at the conclusion of the local negotiation period, the management representative and the Union representative will sign a local memorandum of understanding for those items on which agreement has been reached. Any items which remain in dispute and which are subsequently resolved in accordance with the local implementation provisions of this Article will be incorporated as an addendum to the local memorandum of understanding. The format for the local memorandum shall be as follows: This Memorandum of Understanding is entered into on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, between the representatives of the United States Postal Service, and the designated agent of the National Postal Mail Handlers Union, AFL-CIO, a Division of the Laborers' International Union of North America, pursuant to the Local Implementation Article of the **2016** National Agreement. This Memorandum of Understanding constitutes the entire agreement on matters relating to local conditions of employment.

Section 30.4 sets out the procedures and specific language required for executing the LMOU and provides for incorporation of items eventually resolved through the impasse procedures.

## **ARTICLE 31 UNION-MANAGEMENT COOPERATION**

### **Section 31.1 Membership Solicitation**

The Union may, through employees employed by the Employer, solicit employees for membership in the Union and receive Union dues from employees in non-work areas of the Employer's premises, provided such activity is carried out in a manner which does not interfere with the orderly conduct of the Employer's operation.

Section 31.1 specifies the right of the union to solicit employees for membership and to receive dues payments from employees in non-work areas of postal installations, subject to a requirement that the activity does not interfere with postal operations.

**Question:** Are new employees permitted to fill out applications for membership in the Union during employee orientation?

**Answer:** Yes. New employees can complete SF-1187, Authorization for Deduction of Union Dues, during employee orientation. The completion of the forms should be carried out in areas designated by management.

Source: Step 4 Grievance H4N-4J-C 2536, dated August 29, 1985.

### **Section 31.2 Electronic Communication**

The Employer shall, on an accounting period basis, provide the Union at its national headquarters with **electronic communication** containing information as set forth in the Memorandum of Understanding regarding Article 31.

[See Memo and Letter, pages 198-199]

This language requires the Postal Service to provide specified detailed information about each member of the mail handlers bargaining unit represented by the NPMHU. The Union uses this information to conduct its representation functions and administer its membership information system. The referenced Memorandum of Understanding Article 31 – Computer Tape Accounting Period Report, and a Letter of Intent Article 31 – Information/Reports outlining certain additional reports and indicating their cost and frequency of production, are reprinted at the end of this article.

### **Section 31.3 Information**

A The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement,

administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the written request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information.

B Requests for information relating to purely local matters should be submitted by the local Union representative to the installation head or designee. All other requests for information should be directed by the Union to the Vice President, Labor Relations.

C Nothing herein shall waive any rights the Union may have to obtain information under the National Labor Relations Act, as amended.

This language sets forth the parameters for providing information when requested by the union. Management must provide the union with all relevant information necessary for collective bargaining or for the enforcement, administration or interpretation of the agreement, including information necessary to determine whether to file or to continue processing a grievance. The union's request for information must be made in writing.

The union is required only to give a description of the information it needs and to make a reasonable claim that the information is needed to enforce or administer the contract. An explanation of the relevance of the information is required; the union is not permitted to conduct a "fishing expedition" into employer records.

Paragraph C of this section recognizes the Union's legal right to obtain USPS information under the National Labor Relations Act, which may be enforced through the filing of an unfair labor practice complaint with the National Labor Relations Board.

Examples of types of information covered by this provision include:

- Employee attendance records;
- Employee payroll records;
- Documents in an employee's official personnel file;
- Internal USPS instructions and memoranda;
- Employee disciplinary records;
- Handbooks and manuals;
- Reports and studies;
- Seniority lists;
- Overtime Desired List and Volunteer List records;
- Bid records and
  - Postal Inspection Service Investigative Memoranda (IM) relating to employee discipline.

Settlements and arbitration awards have addressed the Union's entitlement to information in certain specific areas:

A completed PS Form 2608, Supervisor's Step 1 Grievance Summary, will be provided upon request at Step 2 or at any subsequent step of the grievance procedure.

Source: Step 4 Grievance H1M-1J-C 10717, dated March 22, 1984.

Any and all information upon which the parties rely to support their position in a grievance is to be exchanged between the representatives to assure that every effort is made to resolve the grievance at the lowest possible level.

Source: Step 4 Grievance H8C-5K-C 14259, dated April 23, 1981.

Minutes of Quality of Work Life meetings must be submitted to a non-participating union when that union asserts a need for specific minutes in order to determine whether or not to file a grievance and provides a reasonable explanation of that need.

Source: National Arbitration Award H4T-2A-C 36687, Arbitrator R. Mittenthal, dated November 16, 1990.

Restricted sick leave lists will be provided upon union request, pursuant to the routine use provisions of the Privacy Act.

Source: Pre-arbitration Settlement H8C-5D-C 8083, dated April 14, 1981.

**Question:** What is the proper level at which the Union should generate and file requests for information relating to purely local matters?

**Answer:** Requests relating to purely local matters should be submitted by the local union representative to the installation head or his/her designee.

Information regarding costs chargeable for providing information to the union is found in Chapter 4 of the AS-353; note that the union is in the AS-353 category of "All Other Requesters." Currently, the AS-353 provides for the waiver of information fees for the first 100 pages of duplication and the first 2 hours of search time; after the first 100 pages, duplication costs are charged at the rate of \$0.15 per page. While relevant excerpts from that handbook are reprinted below, a review of the complete AS-353 language is recommended.

#### **4-6.2 Aggregate Requests**

When a custodian reasonably believes that a requester is attempting to break a request down into a series of requests to avoid fees, the custodian may aggregate the requests and charge accordingly. Multiple requests pertaining to unrelated subject matters are not aggregated. Requests made by more than one requester may be aggregated when a custodian has a concrete basis to conclude that requesters are acting together to avoid fees.

#### 4-6.5 How to Assess Fees

- a. *Fees Not Assessed.* The Postal Service does not charge for responding to the following: requests for records if fees do not exceed \$10  
...

**Question:** How are payments for requested information handled?

**Answer:** The union agrees that it will be required to reimburse the Postal Service for any costs reasonably incurred in gathering requested information, in keeping with the provisions of the ASM (now AS-353). Management should provide the union with an estimate of the fees involved and may require payment in advance. Thus, requests for information should not be denied solely due to compliance being burdensome and/or time consuming.

Source: Step 4 Grievance H4C-1K-C 41761, dated June 14, 1988.

### **Section 31.4 Committee**

The Employer and the Union, believing that improvements in the work life can heighten employee job satisfaction, enhance organizational effectiveness, and increase the quality of service and that these objectives can be best accomplished by joint effort, hereby continue, at the national level, a joint Committee to Improve the Quality of Work Life.

**(The preceding Article, Article 31, shall apply to Mail Handler Assistant employees.)**

This paragraph establishes the Quality of Work Life or QWL process as part of the parties' contractual relationship.

The following Memorandum of Understanding is referenced in Section 31.2.

### **MEMORANDUM OF UNDERSTANDING**

#### **ARTICLE 31 - ELECTRONIC COMMUNICATION ACCOUNTING PERIOD REPORT**

Pursuant to the provisions of Article 31 of the National Agreement, the Employer shall, on an accounting period basis, provide the Union with **electronic communication** containing the following information on those in the bargaining units:

- |                       |                          |
|-----------------------|--------------------------|
| 1. SSN                | 14. Rate Schedule        |
| 2. Last Name          | 15. Nature of Action     |
| 3. First Initial      | 16. Effective Date       |
| 4. Middle Initial     | 17. Pay Grade            |
| 5. Address            | 18. Pay Step             |
| 6. City               | 19. Health Benefit Plan  |
| 7. State              | 20. Designation Activity |
| 8. ZIP Code           | 21. Enter on Duty Date   |
| 9. Post Office Name   | 22. Retire on Date       |
| 10. PO State          | 23. Layoff               |
| 11. PO ZIP            | 24. Occupation Code      |
| 12. PO Finance Number | 25. Pay Location         |
| 13. PO CAG            |                          |

Social Security Numbers (SSNs) will continue to be provided to the National Office of the National Postal Mail Handlers Union. The NPMHU will ensure that all SSNs provided will be kept confidential.

Employee Identification Numbers (EINs) will be provided to the National Office of the NPMHU, and in place of SSNs to Union Officials at the Local Level.

In keeping with the parties' interest in protecting the confidentiality of employees' SSNs, and in reducing the possibility of identity theft, they agreed that dissemination of SSNs would be limited to the National Office of the Union. Reports provided to the Local Unions that previously contained SSNs will now provide Employee Identification Numbers in their place.

## LETTER OF INTENT

### ARTICLE 31 - INFORMATION/REPORTS

As a result of the discussions held regarding Article 31 of the National Agreement, the Employer shall provide to the Union the information and reports listed below at the frequency designated. The Union shall compensate the Postal Service for its actual costs associated with the systems, programming and production, unless specifically indicated otherwise.

The information and reports shall be provided through the Office of the Vice President, Labor Relations, at the costs and frequencies listed below:

INFORMATION/REPORT	COST	FREQUENCY
1. ORPES Report	No Cost	Accounting Period
2. National Payroll Hours Summary Report	No Cost	Accounting Period
3. 200 Man-Year Report	No Cost	Accounting Period
4. Listing of Associate Offices, Districts, Areas	No Cost	Accounting Period
5. Dues Check-Off With Full First Name and Union Anniversary Date	No Cost	Pay Period
6. Safety Data - from Form 1769 (without employee identification; with scrambled social security numbers)	Actual cost not to exceed \$2500	Annual
7. Financial and Operations Statement Summary	No Cost	Accounting Period

Additionally, in January of each year of this Agreement, the Postal Service shall provide the Union, at its request, with **electronic communication** containing the information it agreed to provide it on its membership in **2016** from the following files:

1. Salary History File
2. Hours History File
3. Employee Master File
4. W-2 Information/Gross Salary File

All actual costs associated with the systems, programming and production of the information shall be borne by the Union, although the Postal Service shall make reasonable efforts to retain and reuse the computer programs used in previous years.

Since the methods, means and types of information collected by the Postal Service are subject to change, the availability of any information or reports are dependent solely on the Postal Service's determination to keep such records.

## MEMORANDUM OF UNDERSTANDING

### EDUCATION AND TRAINING FUND

It is hereby recognized and acknowledged by the United States Postal Service and the National Postal Mail Handlers Union, AFL-CIO, a Division of The Laborers' International Union of North America, that there is a need to further expand and improve the education and training opportunities of both supervisors and employees. Further, the parties recognize that there is a need to provide both supervisors and employees with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness and an overall improved labor/management climate.

In keeping with this objective, the parties agree to continue during the term of this National Agreement the Joint Education and Training Fund for the purposes of providing education and training in the following areas:

- A. Contract Training
- B. Labor/Management Relations
- C. Such other purposes as the members of the National Committee may mutually agree upon.

This activity shall be administered by a Joint National Committee comprised of six persons, three appointed by the Employer and three by the Union. The Committee shall set policy, suggest and approve education and training programs.

The parties shall also establish a Local Joint Education and Training Committee. It shall be established on a District basis. The Local Committee representation shall be comprised of two members each from the respective local parties. The purpose of the Local Committee is to select and suggest various programs best suited for their District from a menu of programs developed and approved by the National Committee.

The Employer shall make available \$1,000,000.00 per year for the Joint Education and Training Committee **for each Fiscal Year covered by the 2016 National Agreement**. In the event that the maximum allowable annual contribution of the Employer is not used, the remainder shall not carry over to the succeeding fiscal year and no funds will be carried beyond the term of the **2016 Agreement**. The Fund shall be supervised by the Joint National Committee. However, the disbursement of any expenditures must be authorized by the

appointed chairpersons of each of the respective parties. The appointment of such shall be in writing and provided to each of the parties.

This Memorandum of Understanding established the jointly-administered Education and Training Fund, which provides money **for each** Fiscal Year **covered by the 2016 National Agreement** to provide continuing education and training with regard to the contract, labor-management relations and other matters identified by the national committee administering the program.

## **ARTICLE 32 SUBCONTRACTING**

### **Section 32.1 General Principles**

- A The Employer will give due consideration to public interest, cost, efficiency, availability of equipment, and qualification of employees when evaluating the need to subcontract.

This section sets forth the factors which the Postal Service must consider in evaluating the need to subcontract.

- B The Employer will give advance notification to the Union at the national level when subcontracting which will have a significant impact on bargaining unit work is being considered and will meet with the Union while developing the initial Comparative Analysis Report. The Employer will consider the Union's views on costs and other factors, together with proposals to avoid subcontracting and proposals to minimize the impact of any subcontracting. A statement of the Union's views and proposals will be included in the initial Comparative Analysis and in any Decision Analysis Report relating to the subcontracting under consideration. No final decision on whether or not such work will be contracted out will be made until the matter is discussed with the Union.

This section requires that the Postal Service give advance notice to the NPMHU at the national level when subcontracting is being considered which will have a "significant impact" on bargaining unit work and meet with the Union while developing the initial Comparative Analysis Report and consider the Union's views on costs and other factors and its proposals on how to avoid subcontracting or to minimize its impact. A statement of the Union's views and proposals will be included in that initial Comparative Analysis and any related Decision Analysis Report.

### **Section 32.2 Special Provisions**

- A The Employer and the Union agree that at processing and distribution facilities or post offices where mail handler craft employees are assigned and on duty on the platform at the time a star route vehicle is being loaded or unloaded exclusively by a star route contract driver, a mail handler(s) will assist in loading and unloading the star route vehicle, unless such requirement delays the scheduled receipt and dispatch of mail or alters the routing or affects the safety requirements provided in the star route contract.
- B At offices where this Section is applicable, the schedules of mail handlers will not be changed nor will the number of mail handlers be augmented solely on the basis of this Section.

This section provides that, except in limited specified circumstances, mail handlers will assist the contract driver in loading and unloading a star route vehicle when mail handler craft employees are assigned and on duty on the platform when the star route vehicle is being loaded and/or unloaded by a contract driver.

### **Section 32.3 Committee**

Subcontracting is a proper subject for discussion at Labor-Management Committee meetings at the national level provided in Article 38.

**(The preceding Article, Article 32, shall apply to Mail Handler Assistant employees.)**

See also Article 38.

## **MEMORANDUM OF UNDERSTANDING**

### **ARTICLE 32**

In addition to the cap on the MHAs set forth in paragraph 7.1C3 above, the Board acknowledges that the parties may agree upon the use of additional MHAs in other circumstances, when new or contracted work is brought in-house. In addition, whenever contracting-out or in-sourcing is under consideration, the Union may propose different hourly rates for such MHAs to ensure competitiveness with outside services.

**Under the 2016 National Agreement, the parties commit to re-establishing their Subcontracting Committee and continuing their discussions about the possibility** of returning mail handler work from Surface transportation Centers (STC), Mail Transport Equipment Service Centers (MTEC), and the bedloading project. The Committee will consider all relevant factors when discussing the issue outlined above, to include cost, operational efficiency, availability of equipment, and qualification of employees. In addition, any MHA employees utilized as referenced in paragraph 1 will not count against existing non-career caps.

## **ARTICLE 33 PROMOTIONS**

### **Section 33.1 General Principles**

The Employer agrees to place particular emphasis upon career advancement opportunities. First opportunity for promotions will be given to qualified career employees. The Employer will assist employees to improve their own skills through training and self-help programs, and will continue to expand the Postal Employee Development Center concept.

This section provides that the Postal Service will seek to fill career positions by making them available to qualified career employees prior to hiring new employees. Further, this section obligates the postal Service to assist employees seeking advancement through training and self-help programs.

The Postal Service is committed to the principle of promotions from within, with emphasis upon career advancement opportunities.

Source: Step 4 Grievance M-NAT-17, dated February 27, 1974.

Postal Employee Development Centers (PEDC) are field units located in Districts that provide area-wide training and development support services for all postal personnel on a continuing basis. The primary mission of the PEDC is to contribute to and foster improved employee job performance. The PEDC also provides counseling to help employees pursue career and self-development goals.

Source: Employee and Labor Relations Manual Chapter 7, Section 722.1

Self-development training is training that is taken to attain self-determined goals or career objectives that are not directly related to the employee's current job.

Source: Employee and Labor Relations Manual Chapter 7, Section 711.421.

### **Section 33.2 Bargaining Unit Promotions**

- A When an opportunity for promotion to a bargaining unit position exists in an installation, an announcement shall be posted on official bulletin boards soliciting applications from employees in the bargaining unit. Bargaining unit employees meeting the qualifications for the position shall be given first consideration. Qualifications shall include, but not be limited to, ability to perform the job, merit, experience, knowledge, and physical ability. Where there are qualified applicants, the best qualified applicant shall be selected; however, if there is no appreciable difference in the qualifications of the best of the qualified applicants and the Employer selects from among such

applicants, seniority shall be the determining factor. Written examinations shall not be controlling in determining qualifications. If no bargaining unit employee is selected for the promotion, the Employer will solicit applications from all other qualified employees within the installation.

- B Promotions to positions enumerated in Article 12 of this Agreement shall be made in accordance with such Article by selection of the senior qualified employee bidding for the position.

**Question:** Are promotions to higher level positions in the mail handler craft filled by senior employees or by best qualified employees?

**Answer:** Promotions to higher level positions in the mail handler craft, enumerated in Article 12, shall be made by selection of the senior qualified employee bidding for the position.

Mail handlers are eligible to apply for the best qualified positions of Examination Specialist, as outlined in Article 12 (Section 12.2H3), and Console Operator. These positions, however, are assigned to the craft of the successful applicant and are not exclusive to any one particular craft. When a mail handler is the successful applicant, these positions are designated to the mail handler craft. Where more than one applicant is qualified, the best qualified of the applicants is selected. Where there is no appreciable difference in the qualifications of the best of the qualified applicants, and the Postal Service selects from among those applicants, seniority shall be the determining factor.

In addition, Mail handler craft employees may apply, also on a best-qualified basis, for Office Machine Operator, MH-5.

They may also apply on a best-qualified basis for the positions of Accounting Technician, PS-6, and Training Technician, PEDC, PS-6; however, the successful applicants for these positions will be assigned to the clerk craft.

### Section 33.3 Examinations

When an examination is given, there shall be no unreasonable limitation on the number of examinations that may be taken by an applicant.

**Question:** Are examinations given on or off the clock?

**Answer:** In-service examinations are to be conducted on a no-gain no-loss basis. Management will not intentionally schedule in-service examinations in order to avoid any payment applicable under the no-gain no-loss principle.

Source: Pre-arbitration Settlement H8C-4B-C 29625, dated November 21, 1983.

**Question:** Are job interviews given on or off the clock?

**Answer:** Job interviews are to be conducted on a no-gain, no-loss basis. Management will not intentionally schedule job interviews in order to avoid any payment applicable under the no-gain, no-loss principle.

Source: Step 4 Grievance H4C-1M-C 5833, dated March 7, 1986.

**Question:** How many times can an employee take an examination?

**Answer:** When an examination is given, there shall be no unreasonable limitation on the number of examinations that may be taken by an applicant.

## **ARTICLE 34 WORK AND/OR TIME STANDARDS**

### **Section 34.1 Statement of Principle**

The principle of a fair day's work for a fair day's pay is recognized by the parties to this Agreement.

### **Section 34.2 Union Notification**

- A The Employer agrees that any work measurement systems or time or work standards shall be fair, reasonable and equitable. The Employer agrees that the Union will be kept informed during the making of time or work studies which are to be used as a basis for changing current or instituting new work measurement systems or work or time standards. The Employer agrees that the Union may designate a representative who may enter postal installations for purposes of observing the making of time or work studies which are to be used as the basis for changing current or instituting new work measurement systems or work or time standards.
- B The Employer agrees that before changing any current or instituting any new work measurement systems or work or time standards, it will notify the Union as far in advance as practicable, but not less than 15 days in advance.
- C When the Employer determines the need to implement any new nationally developed and nationally applicable work or time standards, it will first conduct a test or tests of the standards in one or more installations. The Employer will notify the Union at least 15 days in advance of any such test.
- D If such test is deemed by the Employer to be satisfactory and it subsequently intends to convert the tests to live implementation in the test cities, it will notify the Union at least 30 days in advance of such intended implementation.

The parties recognize the principle of a fair day's work for a fair day's pay. In addition, the parties agree that the Postal Service can introduce new work measurement systems and establish new time or work standards, as long as those systems or standards are fair, reasonable and equitable.

These provisions of Article 34 further require that, before making any changes in current or instituting any new work measurement systems or work or time standards, the Postal Service will give timely advance notification to the Union. In addition, the Union will be kept informed during the making of time or work studies which are to be used as a basis for changing current or instituting new

work measurement systems or work or time standards, and the Union may designate a representative to observe such studies in postal installations.

Should the Postal Service determine a need to implement any new nationally developed and nationally applicable work or time standards, it first will conduct a test or tests of those standards in one or more installations. The Union will receive at least 15 days advance notice of such a test. Finally, the last paragraph of Section 34.2 requires that the Postal Service will notify the Union at least 30 days in advance of any live implementation of satisfactory tests of changes in work or time standards.

**Question:** Can management establish goals and objectives for employees in a specific work unit?

**Answer:** Yes. Management may establish goals and objectives for employees in specific work units. However, as provided by Section 34.2B, the Postal Service agrees that before changing any current or instituting any new work measurement systems or work or time standards, it will notify the Union as far in advance as practicable, but not less than 15 days in advance.

Source: Step 4 Grievance H1M-5L-C 20301, dated October 4, 1984.

**Question:** Can management use average times as a criterion for measuring employees' performance?

**Answer:** The parties agree that Article 34 embodies mutual recognition of the principles of a fair day's work for a fair day's pay. The parties also agree that discipline cannot be imposed on one mail handler solely because he/she fails to perform at the same level as another.

Source: Step 4 Grievance H4M-3P-C 28212, dated December 8, 1994.

### **Section 34.3 Difference Resolution**

Within a reasonable time not to exceed 10 days after the receipt of such notice, the Union and the Employer shall meet for the purpose of resolving any differences that may arise concerning such proposed work measurement systems or work or time standards.

Section 34.3 establishes clear time limits during which the parties will meet, after the Union's receipt of notice of live implementation, to resolve any differences concerning the proposed work measurement systems or work or time standards.

### **Section 34.4 Grievance and Arbitration**

- A If no agreement is reached within five days after the meetings begin, the Union may initiate a grievance at the national level. If no grievance is initiated, the Employer will implement the new work or time standards at its discretion.
- B If a grievance is filed and is unresolved within 10 days, and the Union decides to arbitrate, the matter must be submitted to priority arbitration by the Union within 5 days. The conversion from a test basis to live implementation may proceed in the test cities, except as provided in Section 34.5.
- C The arbitrator's award will be issued no later than 60 days after the commencement of the arbitration hearing. During the period prior to the issuance of the arbitrator's award, the new work or time standards will not be implemented beyond the test cities, and no new tests of the new standards will be initiated. Data gathering efforts or work or time studies, however, may be conducted during this period in any installation.
- D The issue before the arbitrator will be whether the national concepts involved in the new work or time standards are fair, reasonable and equitable.
- E In the event the arbitrator rules that the national concepts involved in the new work or time standards are not fair, reasonable and equitable, such standards may not be implemented by the Employer until they are modified to comply with the arbitrator's award. In the event the arbitrator rules that the national concepts involved in the new work or time standards are fair, reasonable and equitable, the Employer may implement such standards in any installation. No further grievances concerning the national concepts involved may be initiated.

Section 34.4 provides that if no grievance is filed by the Union at the National level, the Postal Service may implement the new work or time standards at its discretion. If a grievance is filed by the Union at the National level and is unresolved after 10 days, the matter may be submitted to priority arbitration by the Union; any such submission must be made within 5 days. While the dispute is pending, live implementation of the new or changed work measurement system or work or time standard may occur in the test sites (except as provided in Section 34.5 hereunder.)

As noted, while the arbitrator's decision is pending, the new systems or standards will not be implemented beyond the test cities. During this interim period, however, the Postal Service may continue to gather data or conduct related time studies in any other facility pending receipt of the arbitration decision.

The issue before the arbitrator will be whether the national concepts involved in the new work or time standards are fair, reasonable and equitable.

**Question:** Is there any recourse if the Union and Management do not agree on proposed work measurement systems or work and/or time standards?

**Answer:** The Union may file a grievance at the National level to determine whether the new system or standard is fair, reasonable and equitable.

### **Section 34.5 Union Studies**

After receipt of notification provided for in Section 2.D of this Article, the Union shall be permitted to make time or work studies in the test cities. The Union shall notify the Employer within ten (10) days of its intent to conduct such studies. The Union studies shall not exceed ninety (90) days, from the date of such notice, during which time the Employer agrees to postpone implementation in the test cities. There shall be no disruption of operations or of the work of employees due to the making of such studies. Upon request, the Union shall be permitted to examine relevant available technical information, including final data worksheets, that were used by the Employer in the establishment of the new or changed work or time standards. The Employer is to be kept informed during the making of such Union studies and, upon the Employer's request, the Employer shall be permitted to examine relevant available technical information, including final data worksheets, relied upon by the Union.

**(The preceding Article, Article 34, shall apply to Mail Handler Assistant employees.)**

This section provides that, after receiving the notification required by Section 34.2D, the Union may conduct its own time or work studies in the test cities. These studies may not exceed 90 days, and during this period the Postal Service agrees to postpone implementation in the test cities.

## **ARTICLE 35 ALCOHOL AND DRUG RECOVERY PROGRAMS**

### **Section 35.1 Programs**

- A The Employer and the Union express strong support for programs of self-help. The Employer shall provide and maintain a program which shall encompass the education, identification, referral, guidance and follow-up of those employees afflicted by the disease of Alcoholism and/or Drug Abuse. When an employee is referred to EAP by the Employer, the EAP counselor will have a reasonable period of time to evaluate the employee's progress in the program. The parties will meet at the national level at least once every 6 months to discuss existing and new programs. This program of labor-management cooperation shall support the continuation of the EAP Program, at the current level. In addition, the Employer will give full consideration to expansion of the EAP Program where warranted.
- B An employee's voluntary participation in such programs will be considered favorably in disciplinary action proceedings.
- C In offices having EAP Programs the status and progress of the program, including improving methods for identifying alcoholism and drug abuse at its early stages and encouraging employees to obtain treatment without delay, will be proper agenda items for discussion at the local regularly scheduled Labor-Management Committee meetings as provided for in Article 38. Such discussion shall not breach the confidentiality of EAP participants.

The Employee Assistance Program (EAP) is designed to assist employees and their immediate families in recovering from alcoholism and drug abuse and in dealing with other problems in a formal, non-disciplinary setting. The EAP helps employees and their immediate families through consultation, evaluation, counseling, and/or referral to community resources and treatment facilities. Participation in the EAP is voluntary and will not place the employee's job security or promotional opportunities in jeopardy. However, participation in the EAP does not shield the employee from discipline or prosecution. The EAP is a confidential program, subject to the provisions of Section 940 of the Employee and Labor Relations Manual.

**Question:** If an employee enrolls in the EAP, should such enrollment be considered favorably in disciplinary action proceedings?

**Answer:** Yes. An employee's voluntary participation in the program will be considered favorably in disciplinary action proceedings.

**Question:** Is management prohibited from taking disciplinary action while an employee is enrolled in the EAP?

**Answer:** No. Although voluntary participation in EAP will be given favorable consideration in disciplinary action, participation in EAP does not prohibit disciplinary action for failure to meet acceptable standards of work performance, attendance and/or conduct. Furthermore, participation in EAP does not shield an employee from discipline or from prosecution for criminal activities.

Source: Employee and Labor Relations Manual (ELM) Chapter 9, Section 941.32.

**Question:** Will participation in EAP jeopardize an employee's promotional opportunities?

**Answer:** Participation in EAP will not jeopardize an employee's job security or promotional opportunities.

Source: ELM Chapter 9, Section 941.31

### **Section 35.2 Referral Information**

In Postal installations having professional medical units, the Employer will insure that the professional staffs maintain a current listing of all local community federally-approved drug treatment agencies for referring employees with such problems. A copy of this community listing will be given to the local union representative.

**(The preceding Article, Article 35, shall apply to Mail Handler Assistant employees.)**

Due to changes in the Employee and Labor Relations Manual (ELM), Section 942.221, Management Referrals, now provides that management may refer an employee to EAP using the EAP referral form if the supervisor or manager observes such characteristics as listed in Section 942.21 or has some other reason to believe that the EAP could provide needed assistance to the employee. The employee, however, has the option to refuse the referral, and he/she cannot be disciplined for refusing the referral.

Employees also may be referred to EAP by other employees, union representatives, management association representatives, medical personnel, family members, or judicial or social service agencies. Employees are also encouraged to seek assistance on their own.

**Question:** Are there exceptions to the employee's option to refuse a management referral to EAP?

**Answer:** Yes. In instances when there is a Last Chance Agreement, or when the employee has signed a settlement agreement agreeing to participate in the

EAP, the employee can be disciplined for noncompliance with the terms of the signed agreement.

Source: ELM Chapter 9, Section 942.221

**Question:** Is the first visit to EAP on the clock?

**Answer:** An employee's first visit to EAP is on the clock, whether the visit is initiated by management, the union representative, or the employee concerned, unless the employee prefers to visit the EAP unit on his or her time. Subsequent consultations are on the employee's own time.

Source: ELM Chapter 9, Section 941.35

**Question:** What types of leave will be considered if an employee participates in an inpatient treatment program?

**Answer:** In cases in which hospitalization or detoxification is recommended, requests for sick leave, leave without pay, annual leave, or advanced sick leave are the responsibility of the employee and will be given careful consideration by management.

Source: ELM Chapter 9, Section 942.32

**Question:** Is there confidentiality associated with EAP?

**Answer:** Confidentiality is the cornerstone of EAP counseling. EAP counselors are bound by very strict codes of ethics, as well as federal and state laws, requiring that information learned from counseled employees remains private. EAP counselors have licenses and master's degrees in their fields of expertise.

Management officials and union officials have no right to breach the confidentiality of EAP counseling sessions. What an EAP counselor learns in confidential counseling or other treatment of an employee may be released only with the employee's completely voluntary, written consent, or upon the order of a court of law.

Information regarding participation in EAP counseling is confidential pursuant to the provisions of ELM 944.4. Due to the importance of this subject, Section 944.4 is reprinted hereunder in its entirety.

Source: ELM Chapter 9, Section 944.4.

944 Disclosure

944.41 General

944.411 Usual Recipients

Information identifying substance abuse program participants, whether or not such information is recorded, may be disclosed as follows:

- a. To medical personnel outside the Postal Service to the extent necessary to meet a *bona fide* medical emergency involving the EAP participant.
- b. To qualified personnel, with the written authorization of the vice president of Employee Resource Management, for purposes of conducting scientific research or program audits or evaluation. However, under no circumstances may any personally identifiable information be disclosed in the resulting evaluation, research, or audit reports
- c. To a court, under the following circumstances:
  - (1) When authorized by a court order upon showing of good cause, such as when necessary to protect against an existing threat to life or of bodily injury, or in connection with the investigation or prosecution of a crime.
  - (2) In litigation or an administrative proceeding when authorized by the trier of fact, when the EAP participant offers testimony or other evidence pertaining to the content of his or her EAP participation. Counsel should be contacted for assistance in both evaluating the order and in determining the extent to which information must be released.
- d. To any person when the EAP participant gives prior written consent to disclose information. This consent specifies the nature and scope of the topics to be released, to whom information is to be released, the purpose of the disclosure, and the date on which the consent terminates.
- e. To a person in any situation in which the EAP counselor has a duty to warn.
- f. To an expert, consultant, or other individual who is under contract to the Postal Service to fulfill an agency function, but only to the extent necessary to fulfill that function, and in accordance with the Privacy Act restrictions as listed under 39 CFR 266.6.

944.412 Limitation of Disclosure

In all cases cited in 944.411, only information that is absolutely necessary to satisfy the recipient's business or medical need is to be disclosed.

944.42 Criminal Activity

944.421 EAP Records

EAP counseling records or personnel may not be used to initiate or substantiate any criminal charges against an EAP participant or to conduct any investigation of a participant, except as authorized by a court order for good cause.

944.422 Limitation of Confidentiality

If an employee who is an EAP counseling participant reveals the commission or intended commission of serious criminal activity, the EAP counselor is not prohibited from disclosing that information so long as the employee is not identified as an EAP counseling program participant. Confidentiality does not apply in any of the following cases:

- a. A crime is committed on EAP premises or against EAP counselor personnel or a threat to commit such a crime is made.
- b. Incidents occur in which information must be reported as required by state law; for example, mandatory reporting of child abuse and/or neglect (elder abuse in some states).
- c. For a disclosure that may be required by elements of the criminal justice system because they have referred employees who are EAP participants.

## **ARTICLE 36 CREDIT UNIONS AND TRAVEL**

### **Section 36.1 Credit Unions**

- A In the event the Union or its local Unions (whether called Area Locals or by other names) presently operate or shall hereafter establish and charter credit unions, the Employer shall, without charge, authorize and provide space, if available, for the operation of such credit unions in Federal buildings, in other than workroom space.
- B Any postal employee who is an employee of any such credit union or an officer, official, or Board member of any such credit union, shall, if such employee can be spared, be granted annual leave or leave without pay, at the option of the employee, for up to eight (8) hours daily, to perform credit union duties.

**Question:** What are the Postal Service's obligations with regard to providing space for credit unions in Federal buildings?

**Answer:** If space is available, the Postal Service will authorize a suitable location (other than workroom floor space) for credit unions in postal buildings. If the area is accessible through the workroom only, membership in the credit union is restricted to USPS employees (active and retired). Other federal employees in the same building may not join unless the credit union is situated so that it is unnecessary to enter the postal workroom. Credit union business cannot be conducted from any post office service window.

Source: Employee and Labor Relations Manual Section 613.2.

**Question:** Are employees entitled to USPS compensation for performing credit union duties?

**Answer:** No. Postal employees who are employees, officers, officials, or board members of employee credit unions are not entitled to USPS compensation for credit union duties. Such employees have the option of using annual leave or leave without pay for up to 8 hours per day to perform credit union activities, provided that they can be spared from their regular duties.

### **Section 36.2 Travel, Subsistence and Transportation**

- A The Employer shall continue the current travel, subsistence and transportation program.
- B Employees will be paid a mileage allowance for the use of privately-owned automobiles for travel on official business when authorized by the Employer

equal to the standard mileage rate for use of a privately-owned automobile as authorized by the General Services Administration (GSA). Any change in the GSA standard mileage rate for use of a privately-owned automobile will be put into effect by the Employer within sixty (60) days of the effective date of the GSA change.

Most disputes that arise under Section 36.2 pertain to compensation for travel time and/or compensation for mileage. The parties at the National level agree that the appropriate handbook provisions – including the regulations contained in Section 438 of the Employee and Labor Relations Manual (ELM) and Handbook F-15, Travel and Relocation -- generally provide sufficient guidance to resolve any disagreement and that such disputes must be resolved based on the fact circumstances of each individual case.

**Question:** Does commuting time to and from an employee's home and the employee's official duty station qualify as compensable travel?

**Answer:** No. Commuting time before or after the regular workday between an employee's home and official duty station, or any other location within the local commuting area, is a normal incident of employment and is not compensable.

Source: ELM Section 438.121

**Question:** How is the "local commuting area" defined?

**Answer:** The local commuting area is the suburban area immediately surrounding the employee's official duty station and within a radius of 50 miles.

Source: ELM Section 438.11b

**Question:** If an employee is called back to work after the completion of his or her regular work day, does the employee qualify for reimbursement for the travel involved?

**Answer:** Commuting time to and from work is also not compensable when an employee is called back to work after the completion of the regular work day, unless the employee is called back to work at a location other than his or her regular work site.

Source: ELM Section 438.122

**Question:** Are there circumstances under which travel time is compensable when management sends an employee to work in another facility?

**Answer:** Time spent at any time during a service day by an eligible employee in travel from one job site to another within a local commuting area without a break in duty status is compensable.

Source: ELM Section 438.132a.

**Question:** Is an employee entitled to compensation for time spent commuting between locations when employed to work on a permanent basis at more than one location in the same service day?

**Answer:** The time spent commuting between the locations in these circumstances is not compensable travel time, provided there is a break in duty status between the work performed in the different locations. A break in duty status occurs when an employee is completely relieved from duty for a period of at least 1 hour that may be used for the employee's own purposes. This 1 hour or greater period must be in addition to the actual time spent in travel and the normal meal period, if the normal meal period occurs during the time interval between the work at the different locations.

Source: ELM Section 438.123.

**Question:** Does compensable travel time count towards an employee's work hours and overtime hours?

**Answer:** Compensable travel time is counted as worktime for pay purposes and is included in hours worked in excess of 8 hours in a day, 40 hours in a week, or on a nonscheduled day for a full-time employee, for the determination of overtime for eligible employees.

Source: ELM Section 438.15a.

**Question:** When can an employee use a privately-owned vehicle for postal business purposes?

**Answer:** An employee may receive approval when the appropriate official determines that using a privately-owned vehicle will be advantageous to the Postal Service.

Source: F-15 Handbook, Travel and Relocation, Section 5-5.1.1.a.

**Question:** What is the mileage allowance paid to employees for the use of privately-owned automobiles for travel on official business authorized by the Postal Service?

**Answer:** The mileage allowance for use of privately-owned automobiles for travel is equal to the standard mileage rate for use of a privately-owned automobile as authorized by the General Services Administration (GSA).

**C All travel for job-related training will be considered compensable work hours.**

**(The preceding Article, Article 36, shall apply to Mail Handler Assistant employees.)**

When mail handlers remain overnight on travel for job-related training, their travel time will be considered work hours for compensation purposes. Travel time is the time spent by a mail handler moving from one location to another during which no productive work is performed. It includes time spent traveling between his/her residence, airports, training facilities and hotels (portal to portal). Management must provide prior approval for overnight travel.

## **ARTICLE 37 SPECIAL PROVISIONS**

### **Section 37.1 Mail Handler Watchmen**

Former mail handler watchmen, whose positions have been abolished, shall continue to be treated in accordance with the seniority, posting and reassignment provisions of this Agreement.

The Postal Reorganization Act of 1970, in Sections 1201 and 1202 of Title 39 of the United States Code, excludes “any individual employed as a security guard” from the production and maintenance bargaining units of the Postal Service. Mail handler watchmen positions have been eliminated, first through attrition and then through the procedures required by Article 12.

As stated in this section, former watchmen previously represented by the NPMHU, whose positions have been abolished, shall continue to be treated in accordance with the seniority, posting, and reassignment provisions of the National Agreement.

### **Section 37.2 Inspection of Lockers**

The Employer agrees that, except in matters where there is reasonable cause to suspect criminal activity, a steward or the employee shall be given the opportunity to be present at any inspection of employees' lockers. For a general inspection where employees have had prior notification of at least a week, the above is not applicable.

For any inspection of an employee's locker that is not based on reasonable cause to suspect criminal activity, or any general inspection of lockers where employees have not had prior notification of at least a week, either a steward or the employee(s) affected shall be given the opportunity to be present at the inspection.

### **Section 37.3 Local Distribution of Personnel Action Roster Notices**

Copies of information bulletins, which contain notification of personnel changes and are currently posted on post office bulletin boards, will be given to the Mail Handler's Union on a regular basis.

### **Section 37.4 Energy Shortages**

In the event of an energy crisis, the Employer shall make every reasonable attempt to secure a high priority from the appropriate Federal agency to obtain the fuel necessary for the satisfactory maintenance of postal operations. In such a case, or in the event of any serious widespread energy shortage, the Employer

and the Union shall meet and discuss the problems and proposed solutions through the Labor-Management Committee provided in Article 38.

**(The preceding Section, Article 37.4, shall apply to Mail Handler Assistant employees.)**

### **Section 37.5 Local Policy on Telephones**

The parties recognize that telephones are for official USPS business. However, the Employer at the local level shall establish a policy for the use of telephones by designated Union representatives for legitimate business related to the administration of this Agreement, subject to sound business judgment and practices.

The Postal Service at the local level is required to establish a policy, subject to sound business judgment and practices, for the use of telephones by designated Union representatives for legitimate business related to the administration of the National Agreement.

### **Section 37.6 Fatigue**

The subject of fatigue, as it relates to the safety and health of mail handler employees, is a proper subject for discussion in local Joint Labor-Management Safety and Health Committee meetings.

Additional provisions regarding meetings of the local Joint Labor-Management Safety and Health Committee are found in Article 14 (Sections 14.7 and 14.8).

### **Section 37.7 Saved Grade Retention**

An employee shall not lose Saved Grade by bidding on preferred duty assignments in the position and level assigned.

See further Article 4 (Section 4.4) and Article 9 (Section 9.6B).

## **ARTICLE 38 LABOR-MANAGEMENT COMMITTEE**

### **Section 38.1 Statement of Principle**

The Union through its designated agents shall be entitled at the national, regional/area, and local levels, and at such other intermediate levels as may be appropriate, to participate in regularly scheduled Labor-Management Committee meetings for the purpose of discussing, exploring, and considering with management matters of mutual concern; provided neither party shall attempt to change, add to or vary the terms of this Collective Bargaining Agreement.

This article establishes labor-management committees at the national, regional/area and local levels. The purpose of these committees is to discuss matters of mutual concern, subject to the understanding that neither party to these discussions shall attempt to modify the terms of the National Agreement.

These labor-management committees are specifically mentioned in several other provisions of the National Agreement. Various subjects are deemed to be proper for discussion at labor-management meetings, including the following: under Article 2 (Section 2.2), non-discrimination and civil rights, at the national, regional/area and local levels; under Article 8 (Section 8.4D), sustained and excessive overtime where it is being worked by non-volunteers, at the regional/area and local levels; under Article 20 (Section 20.5), the parking program, at the national level; under Article 32 (Section 32.3), subcontracting, at the national level; and under Article 37 (Section 37.4), the problems and proposed solutions associated with an energy crisis or any serious widespread energy shortage, at the national level.

### **Section 38.2 Committee Meetings**

- A At the national and regional/area levels, the Labor-Management Committees shall meet quarterly, unless additional meetings are scheduled by mutual agreement. Agenda items shall be exchanged at least 15 working days in advance of the scheduled meeting. National level agenda items include those of national concern such as human rights, technological and mechanization changes, subcontracting, jurisdiction, uniforms and work clothes, parking and other labor-management subjects. Regional/Area level agenda items include those of regional/area concern such as human rights and other labor-management subjects.
  
- B Union attendance at national level meetings shall be limited to no more than six (6) persons, not including secretarial staff. Union attendance at regional/area level meetings shall be limited to no more than three (3) persons, not including secretarial staff. If the Union requires technical

assistance, such technical assistance shall be in addition to the numbers listed above.

- C Meetings at the national and regional/area (except as to the Christmas operation) levels will not be compensated by the Employer. The Employer will compensate one designated representative from the Union for actual time spent in the meeting at the applicable straight time rate, providing the time spent in such meetings is a part of the employee's regular scheduled work day.

With the exception of meetings dealing with the Christmas operation, the compensation provisions apply only for local Labor-Management Committee meetings.

- D Subject to the provisions of this Agreement, Labor-Management Committee meetings will be separate from other unions.
- E Provided agenda items are submitted, Labor-Management Committee meetings shall be scheduled in all offices in accordance with the following criteria:
  - E1 In offices with a total complement of 300 **bargaining unit** employees or more, meetings will be held once a month. Complement is defined in this Section as total number of employees currently on the rolls in the installation;
  - E2 In offices with a complement of 100 to 299 **bargaining unit** employees, meetings will be held bi-monthly; and
  - E3 In offices of less than 100 employees, meetings will be held quarterly.
- F Agenda items will be exchanged at least 72 hours prior to such meetings. Meetings shall be held at a time and date convenient to both parties. Where agenda items do not warrant a regularly scheduled meeting, discussions may take place by mutual agreement in lieu thereof.

Meeting frequency is determined by the complement of **bargaining unit** employees, **including MHAs**, in each office. Additionally, it is important that the time requirements for exchange of agenda items be adhered to so that full consideration can be given to submitted items. If agenda items do not warrant a regularly scheduled meeting, the parties can mutually agree to discuss issues of concern.

**Question:** As a general rule, should management respond to all issues discussed at meetings of the labor-management committees?

**Answer:** Yes. To maintain good labor-management relations, it is necessary for management to make every effort to respond to all issues discussed at labor-management committee meetings in as short a time as it practical.

Source: Step 4 Grievance NC-S-11532, dated October 24, 1978.

### **Section 38.3 Christmas Operation**

The policies to be established by management for the Christmas operation will be a subject of discussion at a timely regularly scheduled Labor-Management Committee meeting.

### **Section 38.4 Minutes**

Minutes of local Labor-Management Committee meetings may be taken by each party.

## **ARTICLE 39 SEPARABILITY AND DURATION**

### **Section 39.1 Separability**

Should any part of this Agreement or any provision contained herein be rendered or declared invalid by reason of any existing or subsequently enacted legislation or by a court of competent jurisdiction, such invalidation of such part or provision of this Agreement shall not invalidate the remaining portions of this Agreement, and they shall remain in full force and effect.

If any part or provision of the National Agreement is rendered invalid due to legislation or court order, the remainder of the National Agreement will remain in full force and effect.

### **Section 39.2 Duration**

Unless otherwise provided, this agreement shall be effective **May 21, 2016**, and shall remain in full force and effect to and including 12 midnight, **September 20, 2019** and unless either party desires to terminate or modify it, for successive annual periods. The party demanding such termination or modification must serve written notice of such intent to the other party, not less than 90 or more than 120 days before the expiration date of the Agreement.

**(The preceding Article, Article 39, shall apply to Mail Handler Assistant employees.)**

**Except for certain provisions that were specifically designated as retroactive to May 21, 2016 or to other dates set forth in the National Agreement, the terms of the 2016 National Agreement were effective on March 4, 2017.**

The **2016** National Agreement is effective until 12 midnight on **September 20, 2019** unless neither party indicates its desire to terminate or modify it, in which case the National Agreement is automatically renewed for successive annual periods. If either party notifies the other in writing, within the prescribed time limits, of its desire to terminate or modify the National Agreement, then the National Agreement is subject to re-negotiation in accordance with the terms of the Postal Reorganization Act.

## **LETTER OF INTENT**

### **REFERENCES TO UNION, CRAFT OR BARGAINING UNIT**

During negotiation of the **2016** National Agreement, we agreed that references to a union, craft or bargaining unit are limited to the National Postal Mail Handlers Union and the craft it represents, with the following understandings:

Article 1.5: The Postal Service will continue to inform the NPMHU of all new positions whether or not the positions are within the craft unit represented by the NPMHU.

Article 6: This article will continue to apply to all bargaining units covered by the September 15, 1978 Award of James J. Healy.

Article 15.4.D: The Postal Service will continue to send all National level arbitration scheduling letters and moving papers for all bargaining units to the NPMHU.

Article 33.2: This article will continue to permit employees in non-NPMHU represented crafts to make application for best qualified positions in the NPMHU represented craft after required procedures are followed.

Transitional employees may not perform mail handler work.

This Letter of Intent sets forth the parties' understandings regarding issues relating to a number of different contract articles.