UNITED STATES POSTAL SERVICE
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SHERRY A. CAGNOLI
ASSISTANT POSTMASTER GENERAL
LABOR RELATIONS DEPARTMENT

November 12, 1991

Mr. Moe Biller
President
American Postal Workers Union,
AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Moe:

This is in further regard to your July 22, 1991, letter concerning the American Postal Workers Union, AFL-CIO (APWU) delegation of authority to its affiliated local unions. Since our November 5 meeting to discuss this issue was canceled by Mr. Anderson due to scheduling conflicts, let me take this opportunity to clarify and expand upon my earlier responses to your letter.

Since 1971, the Postal Service and the APWU have been successfully administering national collective bargaining agreements and in so doing, interacting with each other's agents at the local level. It is our intention to continue doing precisely that during the period of the 1990 National Agreement. Accordingly, the Postal Service should be recorded as accepting your delegation of authority to the extent that it is consistent with the provisions of the 1990 National Agreement. This expression of acceptance is without prejudice to our existing positions concerning the relative scope of the parties' bargaining authority under the terms of the National Agreement, especially Articles 3 and 19 thereof.

Sincerely,

Sherry A. Cagnoli

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-5167

AMERICAN POSTAL WORKERS UNION, AFL-CIO,
APPELLANT

v.

UNITED STATES POSTAL SERVICE

Appeal from the United States District Court
for the District of Columbia
(Civil Action No. 83-02921)

Argued January 28, 1986

Decided April 18, 1986

Arthur M. Luby for appellant.

Scott T. Kragie, Assistant United States Attorney, with whom *Joseph E. diGenova*, United States Attorney, *Royce C. Lamberth* and *R. Craig Lawrence*, Assistant United States Attorneys were on the brief for appellee.

Before: EDWARDS and GINSBURG, *Circuit Judges*, and FAIRCHILD,* *Senior Circuit Judge*, United States Court of Appeals for the Seventh Circuit.

Opinion for the Court filed by *Circuit Judge* EDWARDS.

EDWARDS, *Circuit Judge*: The instant appeal challenges a decision of the District Court refusing to enforce a labor arbitration award. Because we find that the trial judge simply substituted his judgment for that of the arbitrator, thereby effectively disregarding the legal mandates of the Supreme Court concerning judicial review of labor arbitration awards, we reverse.

The arbitration matter in this case involved a grievance brought by the American Postal Workers Union (the "Union") on behalf of an employee who had been fired for alleged dishonesty in handling postal transactions. At the arbitration proceeding, the employer sought to introduce statements of the grievant made during a custodial interrogation by federal law enforcement officers; the arbitrator found that these statements were elicited before the grievant had been given *Miranda* [1]-type warnings and, on that account, ruled the statements inadmissible. The arbitrator then concluded that "[h]aving excluded the Grievant's statements which form the fundamental basis of the Postal Service charges, the removal action is not sustainable." [2] The arbitrator accordingly overturned the employee's dismissal and reduced it to a long disciplinary suspension without back pay. When the employer refused to comply with the arbitrator's award, the Union sought enforcement in District Court.

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* Sitting by designation pursuant to Title 28 U.S.C. § 294(d).

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[2] *United States Postal Service v. American Postal Workers Union*, Case Nos. C1C-4A-D 14023 & C1C-4A-D 14024, at 18 (1983) (McAllister, Arb.) [hereinafter *Arbitrator's Opinion*], *reprinted in* Appendix to Brief of Appellant at A-24.

In a brief Memorandum Opinion, the District Court expressly acknowledged that the arbitrator's judgment was based on a plausible reading of the parties' collective bargaining agreement. However, the trial judge adopted an alternative interpretation of the agreement and found that the grievant's statements were admissible; the court then concluded that the arbitrator's award could not be enforced because it did not "draw its essence" from the contract as reinterpreted by the trial judge.

We reverse because the trial court's judgment is wholly at odds with federal law regarding labor arbitration. A court has no authority to discard a labor arbitration award which is concededly based on the collective bargaining agreement and then substitute its own view of the proper interpretation of the contract. The Supreme Court has explicitly prohibited a court from making such a substitution. An arbitrator's award must be upheld when it draws its essence from the collective bargaining agreement; it is the arbitrator's construction of the contract that the parties bargained for and not that of the court, and it does not matter whether the court disagrees with the arbitrator's judgment on the merits. *See United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 599 (1960).

In the instant case, the collective bargaining agreement clearly states that, *under the contract*, the Postal Service promises to comply with "applicable laws." Therefore, as the District Court acknowledged, the arbitrator plainly had the authority to consider legal rules, including the possible requirement of a *Miranda* warning, in construing the contract. It is irrelevant whether the arbitrator's judgment was correct with respect to the applicability of *Miranda*. An arbitrator's reading of the contract is entitled to enforcement unless the award itself violates established law or seeks to compel some unlawful action. Here, the arbitrator's judgment was nothing more than a ruling on the admissibility of evidence, which drew its

essence from the parties' contract and violated no established law. A court has no choice in such a circumstance but to uphold and enforce the arbitrator's award.

I. Background

The grievant in the underlying dispute, Arthur Zimmerman, is a postal window and supply clerk. An investigation by the Postal Inspection Service revealed some irregularities in Zimmerman's accounts which led the Inspectors to believe that Zimmerman might be converting postal funds to personal use. Accordingly, an Inspector interviewed Zimmerman in the Postal Inspector's office regarding the suspected misappropriation of funds. After approximately one hour and twenty-five minutes of questioning, the Inspector read Zimmerman his *Miranda* rights and presented him with a waiver. Zimmerman then signed two statements admitting dishonesty in the handling of postal transactions.

The Inspection Service removed Zimmerman from his position and brought criminal charges against him. At the criminal trial, the court excluded Zimmerman's statements, ruling that they were the result of interrogation prior to the recitation of *Miranda* warnings and, therefore, were obtained in violation of the Fifth Amendment. Zimmerman was acquitted.

Hearings were later held before an arbitrator to determine whether the collective bargaining agreement allowed Zimmerman's removal from his position as postal clerk. Since the collective bargaining agreement provided that an employee could be removed only for "just cause," the parties agreed that the issue before the arbitrator was whether just cause existed for the discharge of Zimmerman. Although the Postal Service introduced evidence at the arbitration hearings which showed that Zimmerman had not followed postal regulations concerning the handling of postal funds, Zimmerman's own state-

ments were the only evidence of his wrongful conversion of funds. The Postal Service urged the arbitrator to consider the statements. The Union argued that the statements should be excluded because they had been obtained through a custodial interrogation which was conducted before Zimmerman had been read his *Miranda* rights.

The arbitrator ruled that "just cause" for dismissal was absent. At the outset of his opinion, the arbitrator identified the Articles of the collective bargaining agreement and the postal regulations relevant to his inquiry.[3] Among the provisions cited by the arbitrator was Article 3, Management Rights, which requires that the discharge of a Postal Service employee must be "consistent with applicable laws and regulations."

The arbitrator's ruling turned on his judgment that Zimmerman's statements were inadmissible because they were obtained in violation of *Miranda*. In reaching the conclusion that Zimmerman had been subject to a "custodial interrogation" prior to receiving *Miranda* warnings, the arbitrator noted that Postal Inspectors are federal law enforcement officers, that Zimmerman was an acknowledged suspect and that Zimmerman had been isolated from all outside contact during the questioning. The arbitrator then observed that *Miranda* warnings are a well-known safeguard to prevent individuals from being compelled to incriminate themselves when faced with criminal charges. Any statements made by the defendant during a custodial interrogation must be excluded from his criminal trial unless the Government shows that

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[3] The arbitrator cited the following Articles as "pertinent": Article 3, Management Rights; Article 16, Discipline Procedure; Article 19, Handbooks and Manuals; and Article 28, Employee Claims. The arbitrator also cited sections concerning employee conduct and procedures for handling postal funds which are contained in various Postal Service Manuals. *Arbitrator's Opinion* at 3-5, *reprinted in* Appendix to Brief of Appellant at A-9 to A-11.

the defendant was warned of and validly waived his *Miranda* rights. The arbitrator concluded that Zimmerman's statements should be excluded in the civil removal proceedings, apparently because the Postal Inspectors sought to obtain the statements for a criminal prosecution.

The arbitrator refused to uphold Zimmerman's dismissal because the grievant's excluded statements were the only evidence of wrongful conversion. However, the arbitrator decided that Zimmerman's failure to follow postal regulations warranted some discipline. The discharge was accordingly reduced to a long disciplinary suspension without pay, to be recorded on Zimmerman's personnel record.

When the Postal Service declined to comply with the arbitrator's judgment, the Union brought an action in District Court to enforce the award. The District Court dealt with the case on cross-motions for summary judgment. In reviewing the arbitrator's award, the trial court correctly acknowledged that an arbitration award is entitled to deference from courts, so long as it "draws its essence" from the collective bargaining agreement. The District Court also clearly recognized that there was language in the parties' collective bargaining agreement that "suggest[ed] other applicable law be applied which conceivably would include *Miranda* warnings."[4] The District Court, however, overturned the arbitration award based on *its* interpretation of Article 17, § 3 of the collective bargaining agreement, which provides that "[i]f 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

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[4] *American Postal Workers Union v. United States Postal Service*, Civ. Action No. 83-2921, slip op. at 4 (D.D.C. Jan. 22, 1985), *reprinted in* Appendix to Brief of Appellant at A-4.

granted."[5] The District Court reasoned that this section of the contract revealed that the parties to the collective bargaining agreement must have considered the rights of employees during an interrogation and agreed to procedures other than those provided by *Miranda*. The District Court therefore concluded that, under this alternative reading of the contract, *Miranda* warnings need not be given to employees prior to a custodial interrogation.

Having substituted its judgment for that of the arbitrator, the trial court had no trouble in concluding that the arbitrator's award did not draw its essence from the collective bargaining agreement. The District Court accordingly denied the Union's motion for summary judgment and granted that of the Postal Service. The Union appeals to this court.

II. Analysis

A. *Standard of Review*

In the landmark opinions in the *Steelworkers Trilogy* the Supreme Court made it clear that a fundamental policy of national labor legislation is to promote voluntary, binding labor arbitration. The Court held that, where the parties have agreed to submit grievance disputes to arbitration, the courts have a very circumscribed role to play.

In *United Steelworkers v. American Manufacturing Co.*,[6] the Court stated that courts have "no business weighing the merits of the grievance," because "[t]he agreement is to submit all grievances to arbitration, not

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[5] Agreement between United States Postal Service and American Postal Workers Union, AFL-CIO, National Association of Letter Carriers, AFL-CIO, Art. 17, § 3 (July 21, 1981-July 20, 1984), *reprinted in* Appendix to Brief of Appellant at A-52.

[6] 363 U.S. 564 (1960).

merely those which the court will deem meritorious." [7] Likewise, courts called upon to review and enforce arbitration awards have only a limited role to play. In *United Steelworkers v. Enterprise Wheel & Car Corp.*,[8] the Court stated that judges should not second-guess arbitrators' judgments, but should only look to see whether the award "draws its essence from the collective bargaining agreement." [9] And in *United Steelworkers v. Warrior & Gulf Navigation Co.*,[10] the Court made clear that the nature of a collective bargaining agreement is different from that of most contracts: "it is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate;" [11] moreover, it is supplemented by the "common law of a particular industry or of a particular plant." [12] The labor agreement, in other words, is a constitution of industrial self-government, in which the knowledgeable arbitrator plays an integral part. Thus, a reviewing court's role is strictly limited to determining whether the arbitrator exceeded his or her authority under the agreement. The court is not to concern itself with whether the arbitrator resolved the issue correctly.

In *Enterprise Wheel*, the Court expressly recognized that an arbitrator, in construing an agreement, "may of course look for guidance from many sources." [13] The Court instructed that, even in the face of an ambiguous arbitration award, a judge has no authority to second-guess arbitral judgments; [14] "[i]t is the arbitrator's con-

[7] *Id.* at 568.

[8] 363 U.S. 593 (1960).

[9] *Id.* at 597.

[10] 363 U.S. 574 (1960).

[11] *Id.* at 578.

[12] *Id.* at 579.

[13] *Enterprise Wheel*, 363 U.S. at 597.

[14] *See id.* at 598.

struction which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his." [15] Very recently, in *W.R. Grace & Co. v. Local Union 759, International Union of United Rubber Workers*,[16] the Court forcefully emphasized the continuing validity of the highly deferential standard of review enunciated in *Enterprise Wheel*:

> When the parties include an arbitration clause in their collective-bargaining agreement, they choose to have disputes concerning constructions of the contract resolved by an arbitrator. Unless the arbitral decision does not "dra[w] its essence from the collective bargaining agreement," a court is bound to enforce the award and is not entitled to review the merits of the contract dispute. This remains so even when the basis for the arbitrator's decision may be ambiguous.[17]

B. *Application of the Standard of Review*

1. *The Arbitrator's Decision Drew its Essence from the Collective Bargaining Agreement*

We reject the District Court's decision in this case because it flies in the face of the legal principles enunciated in *Enterprise Wheel* and *W.R. Grace*. The trial court specifically stated that the arbitrator's interpretation was supported by a conceivable reading of the collective bargaining agreement. However, instead of accepting the arbitrator's construction, the District Court adopted a different interpretation which it felt was superior. It is precisely this type of judicial selection between competing contract interpretations which is foreclosed by the mandate of *Enterprise Wheel*. The parties bargained for

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[15] *Id.* at 599.

[16] 461 U.S. 757 (1983).

[17] *Id.* at 764 (quoting *Enterprise Wheel*) (citations omitted).

the arbitrator's construction of the contract and they are bound by it; a court has no authority to substitute its judgment for that of the arbitrator. At oral argument, even counsel for the Postal Service appeared to recognize that the District Court's rationale was fatally flawed.

We reinstate the arbitrator's award because, as the District Court initially recognized, it draws its essence from the collective bargaining agreement. It is plain that the contract gave the arbitrator the authority to consider the applicability of a *Miranda*-type rule. The arbitrator stated that pertinent contract language appeared, *inter alia*, in a provision of the agreement specifying that the discharge of Postal Service employees must be "consistent with applicable laws and regulations." The *Miranda* rule is surely within the realm of "applicable law" when interrogation by federal law enforcement officers leads to the discharge of an employee. Nothing in the contract describes how to handle such a situation, nor does the agreement prohibit an arbitrator from considering the *Miranda* rule.

When viewed from the proper perspective, this case involves a very routine dispute over the application of an evidentiary rule; such disputes are standard fare for arbitrators. The constitutional overtones emanating from the arbitrator's judgment to consider the applicability of *Miranda* in no sense alter the conclusion that the arbitrator's decision reflected his *interpretation of the contract.*

2. *An Alleged "Mistake of Law" Does Not Alter the Standard of Review*

The Postal Service emphasizes the arbitrator's statement that he would have upheld the discharge of Zimmerman "but for" the *Miranda* violation which required exclusion of Zimmerman's admission. But the critical point in this case—which is sometimes lost in the heat of the battle over the merits of appellant's claim—is that it does not matter whether the arbitrator's con-

struction and applicaiton of *Miranda* was correct as a "matter of law." During oral argument, counsel for the Postal Service conceded that, unless the contract expressly limited the arbitrator's authority, an arbitral decision to exclude evidence under the "hearsay rule" would not be subject to judicial review, *even* if the court believed that the arbitrator had made a so-called "mistake of law" in interpreting the hearsay rule. This hypothetical situation is essentially indistinguishable from the case at bar. In either case, the arbitrator's decision really concerns only the meaning of the contract. Therefore, courts need not fear that they are sanctioning bad law by not correcting arbitrators' alleged legal errors.

Professor Theodore St. Antoine's description of the arbitrator's role as that of designated "contract reader" for the parties is one of the better analyses of this point.[18] According to St. Antoine, the adoption of an arbitration clause indicates that the parties have agreed to employ an arbitrator as their "contract reader" and empowered him or her to render a binding interpretation of the collective bargaining agreement. When construction of the contract implicity or directly requires an application of "external law," *i.e.*, statutory or decisional law, the parties have necessarily bargained for the arbitrator's interpretation of the law and are bound by it. Since the arbitrator is the "contract reader," his interpretation of the law becomes part of the contract and thereby part of the private law governing the relationship between the parties to the contract. Thus, the parties may not seek relief from the courts for an alleged mistake of law by the arbitrator. They have agreed to be bound by the arbitrator's interpretation without regard to whether a judge would reach the same result if the matter were heard in court. The parties' remedy in such cases is the

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[18] St. Antoine, *Judicial Review of Labor Arbitration Awards: A Second Look at* Enterprise Wheel *and its Progeny*, 75 MICH. L. REV. 1137 (1977).

same remedy they possess whenever they are not satisfied with the arbitrator's performance of his or her job: negotiate a modification of the contract or hire a new arbitrator.

In another brilliant article on this subject, Professor David Feller persuasively defends the federal labor policy of nonintervention in the arbitral process.[19] Feller correctly points out that, in the typical labor contract, a critically important part of the bargain is the agreement that disputes between the parties will be governed by the rules contained in the contract as they may be interpreted and applied by the parties' arbitrator. When the courts intervene and supply their own interpretation of the agreement, this undermines a substantial basis of the parties' bargain.

The views of Professor St. Antoine and Professor Feller are not the philosophical leanings of misguided scholars. Rather, their positions are precisely consistent with the views enunciated by the Supreme Court in *Enterprise Wheel* and *W.R. Grace & Co.* No matter how these cases are labeled, this circuit, and others as well, have recognized that:

> an award will not be vacated even though the arbitrator may have made, in the eyes of judges, errors of fact and law unless it "compels the violation of law or conduct contrary to accepted public policy." [20]

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[19] Feller, *A General Theory of the Collective Bargaining Agreement*, 61 CALIF. L. REV. 663 (1973).

[20] *Washington-Baltimore Newspaper Guild, Local 35 v. Washington Post Co.*, 442 F.2d 1234, 1239 (D.C. Cir. 1971) (quoting *Gulf States Telephone Co. v. Local 1692, International Brotherhood of Electrical Workers*, 416 F.2d 198, 201 (5th Cir. 1969)), *quoted with approval in Washington Hospital Center v. Service Employees International Union, Local 722*, 746 F.2d 1503, 1514 (D.C. Cir. 1984); *see also Wilko v. Swan*, 346 U.S. 427, 436-37 (1953) ("interpretations of the law by the arbitrators in contrast to manifest disregard are not subject, in the federal courts, to judicial review for error

Thus, in the instant case, the legal propriety of the arbitrator's decision to exclude the employee's statements is irrelevant. Indeed, if a *district court* had made the same legal ruling while presiding over a civil trial, it is conceivable that we might reverse in light of the Supreme Court's ruling that statements obtained in violation of the Fourth Amendment are admissible in civil deportation hearings.[21] We are not, however, considering the decision of a district court on this legal issue, but rather the decision of an arbitrator. Our review of an arbitrator's award is strictly limited to determining whether the award draws its essence from the contract. We possess no unbridled authority to review the correctness of an arbitrator's decision of law under the contract.

3. *The Postal Service's Argument in Favor of an Alternative Reading of the Contract is Meritless*

Finally, we must reject the Postal Service's argument that the award does not draw its essence from the contract because the arbitrator did not adopt the alternative interpretation relied upon by the District Court. In particular, the trial court looked to Section 3 of Article 17 of the collective bargaining agreement, which provides

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in interpretation" (footnote omitted)); *Local 863 International Brotherhood of Teamsters v. Jersey Coast Egg Producers, Inc.*, 773 F.2d 530, 533 (3d Cir. 1985) (erroneous interpretation of law is no grounds to set aside arbitral award); *Capital District Chapter of New York State, P.D.C.A. v. International Brotherhood of Painters, Local Union Nos. 201, 12 & 622*, 743 F.2d 142, 148 (2d Cir. 1984) (citing *Wilko* for proposition that arbitrators' interpretations of law are not subject to judicial review for error in interpretation); *George Day Construction Co. v. United Brotherhood of Carpenters, Local 354*, 722 F.2d 1471, 1477 (9th Cir. 1984) (arbitral award which represents plausible interpretation of contract must be enforced notwithstanding erroneousness of legal conclusions).

[21] *Immigration & Naturalization Service v. Lopez-Mendoza*, 104 S. Ct. 3478 (1984)

that employees may request that a steward or Union representative be present during any interrogation. The Postal Service does not argue that the better interpretation of the contract rests on this section, but rather that the arbitrator failed to consider this section when construing the contract. If the arbitrator had rendered a judgment based on external legal sources, wholly without regard to the terms of the parties' contract, then the award could not be said to draw its essence from the contract. Such is not the case here. In the instant case, the arbitrator in his written opinion identified the pertinent contract provisions, including a provision which requires the Postal Service to act in accordance with "applicable laws" when discharging employees. Moreover, the arbitrator made clear that the issue was whether "just cause" existed—plainly a contract interpretation question. The arbitrator simply did not agree with the Postal Service's evaluation of which contract provisions were most relevant. The arbitrator's selection of pertinent contract provisions was *itself* an interpretation of the contract which this court has no authority to disturb. Therefore, we reject this argument by the Postal Service.

4. *Considerations of So-Called "Public Policy"*

There is one final point in this case that deserves mention. The Postal Service claims that, even if the arbitrator's award draws its essence from the contract, it should be set aside as violative of "public policy." We reject this contention as baseless under existing law.

As noted above, it is well-understood that courts will not enforce an arbitration award if the award itself violates established law or seeks to compel some unlawful action. However, this rule, which is sometimes referred to as a public policy exception, is *extremely narrow*. In *W.R. Grace*, the Supreme Court has explained that, in order to provide the basis for an exception, the public policy in question "must be well defined and dominant and is to be ascertained by reference to the laws and

legal precedents and not from general considerations of supposed public interests.' " [22] Obviously, the exception is designed to be narrow so as to limit potentially intrusive judicial review of arbitration awards under the guise of "public policy."

It is not at all clear that the reference to "public policy" in *W.R. Grace* denotes anything more or different than what the courts have said over the years in construing *Enterprise Wheel*.[23] But, in any event, it is plain from the language in *W.R. Grace* itself that the Court meant to say only that an arbitration award may not be enforced if it transgresses "well defined" and "dominant" "laws and legal precedents." It is also clear from the opinion in *W.R. Grace* that judges have no license to impose their own brand of justice in determining applicable public policy; thus, the exception applies only when the public policy emanates from clear statutory or case law, "*not from general considerations of supposed public interests.*" [24]

There is surely no doubt that the instant case does not pose a situation requiring the invocation of a public policy exception. The arbitrator's award was not itself unlawful, for there is no legal proscription against the reinstatement of a person such as the grievant. And the award did not otherwise have the effect of mandating any illegal conduct. In other words, even if the arbitrator's view of *Miranda* was wrong, his decision to

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[22] 461 U.S. at 766 (quoting *Muschany v. United States*, 324 U.S. 49, 66 (1945)).

[23] *See, e.g., Washington-Baltimore Newspaper Guild, Local 35 v. Washington Post Co.*, 442 F.2d 1234, 1239 (D.C. Cir. 1971) ("an award will not be vacated even though the arbitrator may have made, in the eyes of judges, errors of fact and law unless it 'compels the violation of law or conduct contrary to accepted public policy' ").

[24] *W.R. Grace*, 461 U.S. at 766 (quoting *Muschany v. United States*, 324 U.S. 49, 66 (1945)).

exclude the grievant's statements did not in any manner violate the law or cause the employer to act unlawfully.[25] In addition, and most importantly, the grievance plainly raised an arbitrable issue; the arbitrator was properly designated and authorized to hear the case; and the arbitral judgment rested on an interpretation of the contract.

The Postal Service seeks some solace from a decision of the First Circuit in which the court refused to enforce an arbitrator's reinstatement of a convicted felon.[26] Frankly, we find it difficult to square either the rationale or the result in the cited case with the Supreme Court's decision in *W.R. Grace*; however, we need not labor over the question here. In the instant case, the grievant was acquitted of all criminal charges; therefore, the case relied upon by the Postal Service is inapposite. In short, there is no valid basis whatsoever for us to decline to enforce the arbitrator's award on grounds of public policy. For us to embrace the employer's argument here would be to run the risk of allowing an ill-defined "public policy" exception to swallow the rule in favor of judicial deference to arbitration. We will not endorse any such blatant disregard of the teachings of *Enterprise Wheel* and *W.R. Grace*.

CONCLUSION

For the reasons set forth above, the judgment of the District Court is reversed. The case is remanded to the trial court with instructions to enter judgment for the appellant.

So ordered.

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[25] *Cf. Washington Post v. Washington-Baltimore Newspaper Guild, Local 35*, No. 85-5193, slip op. at 4 (D.C. Cir. Apr. 4, 1986) ("We need not defer to an award which contemplates a violation of law.").

[26] *United States Postal Service v. American Postal Workers Union*, 736 F.2d 822 (1st Cir. 1984).

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

May 17, 1995

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Mr. Burrus:

This is in response to your further correspondence dated April 20 concerning Rural Carrier Relief (RCR) employees and the extent to which they may perform APWU bargaining unit work.

As you and Patricia Heath of my staff discussed last week, there does not appear to be any dispute between the APWU and the Postal Service at this level on this subject. RCRs who do not hold a dual appointment as a casual may perform APWU bargaining unit work only as specified in Article 3.

If you wish to provide more information concerning any office in which you perceive there may be a problem, please feel free to contact Ms. Heath at 268-3813.

Sincerely,

for Anthony J. Vegliante
Manager
Contract Administration (APWU/NPMHU)

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

April 20, 1995

William Burrus
Executive Vice President
(202) 842-4246

Dear Mr. Vegliante:

With further response to our exchange of correspondence regarding the use of Rural Carrier Relief (RCR) employees who are not designated as dual appointees to perform APWU bargaining unit work. Perhaps I was not sufficiently clear in my letter of March 30, 1995. The reason for raising the issue was that managers in the Southern Region are interpreting the agreement to mean that RCRs who have not been designated as dual appointees may be permitted to perform as APWU casuals in circumstances that **are not** *covered by Article 3.F of the National Agreement. It was not my intent to interpret the rights of the employer under Article 3 which are not in dispute.*

If the intent of your response is that the use of RCRs, who have not been designated as dual appointees, is limited to the application of Article 3.F, there is no disagreement between the parties. However, if the employer interprets the agreement as permitting their use in non-emergency circumstances, it will be necessary that we have a fuller understanding of our respective positions.

Thank you for your attention to this matter.

Sincerely,

William Burrus

William Burrus
Executive Vice President

Anthony J. Vegliante, Manager
Grievance & Arbitration Division
United States Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260

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LABOR RELATIONS

UNITED STATES POSTAL SERVICE

April 18, 1995

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Mr. Burrus:

This letter is in response to your March 30 inquiry requesting our interpretation of your position regarding the use of Rural Carrier Relief (RCR) employees who are not designated as dual appointees to perform APWU bargaining unit work.

It is the Postal Service's position that rural carrier craft employees who are not designated as dual appointees may be assigned to perform duties in other crafts, including crafts represented by the APWU, in emergency situations as specified in Article 3.F of the National Agreement.

I trust that if you have any further concerns, you will not hesitate to make me aware of them.

Sincerely,

Anthony J. Vegliante
Manager
Contract Administration (APWU/NPMHU)

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

March 30, 1995

William Burrus
Executive Vice President
(202) 842-4246

Dear Mr. Vegliante:

We have been engaged in recent discussions to resolve the outstanding casual issues. The use of mail handler casuals in APWU crafts is one of the outstanding issues that is being discussed. A recent issue of casual usage is the contractual interpretation of the proper use of RCR casuals in the APWU crafts. Unlike the mail handler circumstances, the parties have a long standing practice of designating RCR casuals as "dual appointments" in those circumstances where it is intended to use them in APWU crafts. Postal management in the Southern Region has interpreted the agreement as permitting the use of RCR casuals who have not been designated as dual appointments to perform APWU bargaining unit work.

The union interprets the agreement as limiting the use of RCRs solely as replacement of rural carriers who are absent from work or who are in need of assistance. The exception to this rule is when an RCR has been designated as a dual appointee. Under the latter circumstance, they may be employed as replacements for rural carriers at the appropriate RCR compensation or may be employed as casuals in either rural carriers or APWU bargaining unit duties and compensated as casuals. Under no circumstances may an RCR who has not been designated as a dual appointee, as noted on the Form 50, be permitted to perform APWU bargaining unit work.

I request that you review the appropriate regulations pertaining to the proper use of RCRs and advise of the employer's interpretation.

With kindest regards, I remain

Yours in union solidarity,

William Burrus
William Burrus

Anthony Vegliante, Manager
Grievance & Arbitration
475 L'Enfant Plaza, SW
Washington, DC 20260

UNITED STATES POSTAL SERVICE

VIA CERTIFIED
Z 203 878 468

March 22, 2000

Mr. William Burrus
Executive Vice President
American Postal Worker's Union,
AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Dear Bill:

This is in response to your September 15, 1999, and October 27 correspondence regarding the Postal Service's interpretation and application of "No Layoffs or Reduction in Force," pursuant to Article 6 of the 1998 National Agreement.

In your September 15 letter, you state:

> The union interprets Article 6 as providing the following protections to regular work force employees, including all protected full time, part time flexible and part time regular employees.

By its terms, Article 6 applies to "members of the regular work force, as defined by Article 7, [which] include[s] full-time regulars, part-time employees assigned to regular schedules and part-time employees assigned to flexible schedules." To the extent you intend the above-quoted language in your letter to apply to only the employees as defined by the specific terms of Article 6, we have no disagreement as to the employees to which Article 6 provides protection.

Your September 15 letter goes on to state:

> A. All regular work force (career) employees are protected against involuntary lay-off and in the case of veteran preference eligibles, are protected against reduction in grade provided they meet the following criteria:
>
> 1. Were on the rolls on September 15, 1978, or
>
> 2. Have achieved six (6) years continuous service and have worked a minimum of one hour or had time credited as work of one hour in at least 20 pay periods during each of the continuous six years, or
>
> 3. If not qualified pursuant to #1 or #2 above, were employed in the regular work force as of November 20, 1998.

As to your paragraph A., we assume that the reference to veteran preference eligibles is limited to regular workforce employees. If this is correct, then as to your paragraphs A.1. and A.2.,

above, we have no dispute. As to paragraph A.3., above, we note that the terms and conditions of A.3. are only applicable for the term of the current National Agreement, as set forth in the MOU which appears on page 297.

Finally, your last paragraph reads as follows:

> The application of these protections is that the only regular work force employees referred to as non-protected and subject to lay-off are those regular work force employees hired after November 20, 1998 (pending qualifying pursuant [sic] to #2 above) and the only regular work force veteran preference eligibles who are non-protected and subject to reduction in grade are those hired after November 20, 1998 (pending qualifying pursuant to #2 above).

We note first that A.1., A.2., and A.3. are all alternative means of qualifying for the protection as they are each connected by the conditional term "or." Further, as noted above, A.3. is only applicable for the term of the current contract.

I understand that you initiated a Step 4 grievance on this matter (Q98C-4Q-C00065694) and that the grievance was subsequently appealed to arbitration. This letter would appear to have resolved the questions raised in your correspondence. Accordingly, we believe that the above-captioned case should be withdrawn and removed from the pending arbitration list.

Should there be any questions regarding the forgoing you may contact Thomas J. Valenti of my staff at (202) 268-3831.

Sincerely,

Peter A. Sgro
Manager
Contract Administration

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

September 15, 1999

Dear Mr. Sgro:

Due to the continued deployment of new technology in mail processing and the uncertainties of the impact on assigned employees, it is important that the parties have a mutual understanding of the protections afforded by Article 6 of the collective bargaining agreement. This is to determine if the parties mutually agree to the application and interpretation of those provisions.

Pursuant to the provisions of Article 15, Section 4D., this is to determine if a dispute exist in the interpretation and application of "No Lay Off or Reduction in Force" as agreed to in Article 6 of the National Agreement.

The union interprets Article 6 as providing the following protections to regular work force employees, including all protected full time, part time flexible and part time regular employees.

A. All regular work force (career) employees **are protected against involuntary lay-off** and in the case of veteran preference eligibles, are **protected against reduction in grade** provided they meet the following criteria:

1. Were on the rolls on September 15, 1978, or

2. Have achieved six (6) years of continuous service and have worked a minimum of one hour or had time credited as work of one hour in at least 20 pay periods during each of the continuous six years, or

3. If not qualified pursuant to #1 or #2 above, were employed in the regular work force as of November 20, 1998.

The application of these protections is that the only regular work force employees referred to as **non-protected** and **subject to lay-off** are those regular work force employees hired after November 20, 1998 (pending qualifying pusuant to #2 above) and the only regular work force veteran preference eligibles who are **non-protected** and **subject to reduction in grade** are those hired after November 20, 1998 (pending qualifying pursuant to #2 above).

Please review and respond with the employer's interpretation of the above cited provisions.

Sincerely,

William Burrus
Executive Vice President

Mr. Peter Sgro
Acting Manager
Contract Administration APWU/NPMHU
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

March 4, 1983

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Burrus:

This is in further reference to your February 15 letter concerning the use of SF-8, Notice to Federal Employees About Unemployment Compensation, and its application pursuant to 553.122 of the Employee and Labor Relations Manual (ELM).

Existing regulations in the referenced section of the ELM require prompt issuance of SF-8 to employees being separated from the Postal Service; being transferred to another federal agency or to a postal facility serviced by another Postal Data Center; or being placed in a non-pay status for seven or more consecutive days. Individuals whose work hours or tours of duty are on an "on-call" or intermittent basis should be issued SF-8 only the first time in each calendar year that they are placed in a non-pay status.

There may have been occasions when SF-8 was not issued to employees, as you alleged, because of some inadvertant omission on the part of the separating personnel office. If you have information establishing that a specific location routinely fails to meet the SF-8 issuance requirements, and wish to share it with us, we shall see that appropriate corrective action is taken.

Periodically, a notice reminding personnel officials of the requirement for issuing SF-8 is published in the Postal Bulletin. As information, such a reminder currently is being prepared by the Employee Relations Department and is expected to be ready for publication in the near future.

Sincerely,

James C. Gildea
Assistant Postmaster General
Labor Relations Department

American Postal Workers Union, AFL-CIO
817 Fourteenth Street, N.W. Washington, D.C. 20005 • (202) 842-4250

WILLIAM H. BURRUS
General Executive Vice President

9A

February 15, 1983

Mr. James C. Gildea
Assistant Postmaster General
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

Dear Mr. Gildea:

The Employee and Labor Relations Manual at Chapter 553.122 requires the employer to issue Form SF-8 "to an individual whose work or tours of duty are on an "on call" or intermittent basis ach time they;

a. separate from the USPS for any reason,
b. transfer to another federal agency or to a postal installation serviced by another PDC,
c. are (or will be) placed in a non-pay status for 7 or more consecutive days.

The Employer does not issue Form SF-8 to employees in compliance with the above and as a result affected employees are not advised of eligibility for unemployment compensation and/or the steps to be taken in filing a claim.

Please advise me of the reasons for non-compliance.

Sincerely,

William Burrus,
Executive Vice President

B:mc

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

DEC 16 1983

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
817 - 14th Street, N.W.
Washington, D.C. 20005-3399

Re: M. Biller
Washington, D.C. 20005
H1C-NA-C 77

Dear Mr. Burrus:

On December 2, 1983, we met to discuss the above-captioned grievance at the national level under the provisions in Article 15, Section 3(d), of the National Agreement.

The union alleges that management is improperly applying the provisions of Regional Instruction 399 and Article 7, Sections 2.B and 2.C, of the National Agreement. Specifically, the union believes that a July 13, 1983, Central Region instruction, concerning compliance with Regional Instruction 399 and cross-craft assignments, instructs field managers to change encumbered duty assignments by other than attrition.

During our discussion, it was mutually agreed that the following would represent a full settlement of this case:

> The parties mutually agree that the provisions of Regional Instruction 399 (RI 399) are still applicable to all mail processing operations in the Postal Service. In accordance with Section II.D of RI 399, encumbered duty assignments will not be modified by removing functions designated to another primary craft until and unless such duty assignment becomes vacant through attrition.

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

Sincerely,

A. J. Johnson
Labor Relations Department

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

American Postal Workers Union, AFL-CIO
817 Fourteenth Street N.W. Washington D.C. 20005 • (202) 842-4246

WILLIAM BURRUS
Executive Vice President

September 1, 1983

James C. Gildea
Assistant Postmaster General
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

Dear Mr. Gildea:

I have recently discussed with your representative, John Mularski, the dispute surfacing in the Central Region over implementation of RI-399, the Separation of Craft Assignments. We hear that the General Manager, Labor Relations, Central Region has reached agreement with Mail Handler representatives resolving numerous grievances citing the decision of Arbitrator Bloch in Case No. H8S-5F-C-8027. APWU is, of course, not bound by such Mail Handler settlements. However, the General Manager, Labor Relations for the Central Region has also issued instructions to District Directors, E & LR, with which the APWU disagrees.

The American Postal Workers Union rejects the rationale that the Block decision is applicable to any separation of duties referred to in RI-399. The Union interprets the Block award as limiting the employer's right to make cross-craft assignments under the provisions of Article 7, Section 3B. and C. which clearly apply to "temporary" assignments of employees from one craft to another. The Block award made no reference to RI-399 and in no way dealt with RI-399. RI-399 and the Gamser award in Case No. AD-NAT-311 interpret and apply this issue in a totally different fashion creating an orderly pro-

cedure for the transfer of duties. RI-399 requires that "no postal installation shall declare employees excess, increase the number of employees and/or increase work hours solely as a result of this instruction." Arbitrator Gamser interpreted the Regional Instructions and stated that the joint manning of certain facilities "does not alter the present dictate of Regional Instruction 399 which would not require that practice be disturbed." (Page 13, last sentence). And at Page 18 of the award, he states that "(N)o employee presently performing any of the disputed operations of (sic) functions is to be replaced except by attrition. No hard and fast demarcations have been made. No wholesale disruptions or reassignments of functions or operations is contemplated."

Section 11, D. of RI-399 provides that "no employee's current duty assignment will be modified by removing functions designated to another primary craft until and unless such duty assignment becomes vacant through attrition."

These instructions and interpretations have worked well in the transfer of duties from one craft to another during the past approximately 5 years. The Block award was in no way intended to modify or disturb this procedure.

The Union requests that these instructions relying upon the Block award be repudiated and the parties return to the process intended by RI-399 and supported by the Gamser award.

Please respond at your earliest convenience.

Sincerely,

William Burrus,
Executive Vice President

WB:mc

UNITED STATES POSTAL SERVICE
CENTRAL REGIONAL OFFICE

Chicago, IL 60699

July 13, 1983

REF: CE220:JKWellquist:jh:-0220

JECT: RI 399

- District Directors, E&LR

A recent tour of post offices in the Central Region indicated that many offices may not be in full compliance with RI 399. Although this instruction was issued in February 1979, the offices visited were using clerk craft employees on mail handlers designated work assignments on a daily or routine basis. Such use not only violates the spirit and intent of RI 399, but also violates the specific provisions of Article 7 of the 1981 National Agreement.

National Arbitrator Bloch in a recent award concerning the use of employees across craft assignments, wrote:

> "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 boundries 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 inadequte 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 Subsections B and C. 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.

"Under the circumstances, there having been a crossing of craft lines, it is appropriate that Management provide justification for the action.

"Moreover, while Management contends that assigning Grace to the Letter Carriers would simply have been "make work," it would also appear that the supervisor believed, early on, that calling in two Special Delivery carriers two hours early for the afternoon shift would adequately account for those needs. Therefore, the assignment across craft lines to the Special Delivery Craft could also have been seen, at that point, as "make work."

"In retrospect, one may conclude both that the assignment across craft lines in these particular circumstances was improper and that, asssuming the need in that craft, the eligible employee should have been called in on overtime. Accordingly, the Union's request for overtime payment will be sustained to the extent of the violation.

"But one must proceed on the premise that crossing craft lines is prohibited and that the contractual exceptions are not to be invoked unless clearly met."

Following the above cited tour, several hundred grievances were resolved with some offices required to pay a substantial monetary settlement. In order to avoid similar problems in your districts, it is mandatory that all offices properly schedule and staff their operations to assure compliance with RI 399 and to avoid the improper, daily

assignment of employees across craft lines in violation of Article 7 of the National Agreement.

Attached is language used to settle many of the disputes over RI 399. Please review your districts to assure compliance with these decisions as well as with Article 7. If we can be of assistance in this endeavor, please advise.

J. K. Hellquist
General Manager
Labor Relations Division

Attachments

UNITED STATES POSTAL SERVICE
Central Regional Office
Chicago, IL 60699

Without establishing precedent and without prejudice to the position of the United States Postal Service or the Union in this or any other case, and with the further understanding that the United States Postal Service or the Union will not cite this settlement in any other grievance, arbitration proceeding, or other forum, the grievance is resolved as follows:

> RI 399 requires an office to be properly scheduled and staffed. The need to use cross craft assignments on a daily or routine basis, is indicative that proper scheduling and staffing has not been achieved. Moreover, such daily or routine use of clerks on mailhandlers craft designated assignments, other than under the provisions of Part II,D, is a violation of the spirit and intent of RI 399.
>
> This office is directed to review all work assignments in accordance with the applicable provisions of RI 399. Immediate corrective action is required to achieve full compliance with this instruction. The Regional Mail Processing and Employee and Labor Relations Divisions are available to assist with the proper implementation of this decision and RI 399.
>
> Allied Duties, including the dumping duties at the various distribution belts, are designated to the mailhandlers craft per RI 399. These designations of assignments were made in order to be cost effective, consistent with Part II,A of RI 399.
>
> In this regard, allied duties, although designated to the mailhandlers as the primary craft, may be performed by clerks as outlined in the Footnote on page three. Notwithstanding, such assignment of allied duties to the craft having the distribution function, is only made when such allied duties

"CANNOT BE EFFICIENTLY SEPARATED."

In this regard, the allied duties performed in various operations shall be reviewed. Where such work functions or combination of work functions constitute a daily or routine need, these duties should be separated and assigned to a mailhandler craft employee. To this extent, this matter is considered resolved.

This decision resolves all the attached listed grievances from this office as well as any other similar grievance from this office which is currently pending at any step of the grievance-arbitration procedure as of this date.

The above constitutes a full and complete settlement of the subject cases attached and resolves any or all other issues pertaining thereto.

Frank Sias
Central Regional Director
Mailhandlers Union

J. K. Herquist
General Manager, Labor Relations
U. S. Postal Service

Herbert Walker
Mailhandlers Union

Thomas Newman
Labor Relations Executive

June 28, 1983
Date

June 28, 1983
Date

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

Mr. William Burrus
President
American Postal Workers Union, AFL-CIO
1300 L Street NW
Washington, DC 20005-4128

Re: Q94C-4Q-C 98002334
Q94C-4Q-C 97088941

Dear Mr. Burrus:

Recently, we met to discuss the above-captioned cases, currently pending national level arbitration.

The issue in these cases involves casuals employed under the provisions of the NPMHU or NALC National Agreement who are also employed in the same calendar year under the provisions of the APWU National Agreement. The parties agree that a casual who is employed under the NPMHU or NALC Agreement and who is designated to work in an APWU craft during each 90-day term would not be eligible to be appointed during the same calendar year as a casual under the APWU Agreement. A casual who is employed under the NPMHU or NALC Agreement but is not designated to perform work in an APWU craft would not be barred from subsequent appointments during the same calendar year under the APWU Agreement.

The above is a final and complete settlement of the above-captioned cases. All cases currently on hold or pending at any step of the grievance/arbitration procedure involving these issues are also resolved by this settlement.

Please sign and return the enclosed copy of this decision as your acknowledgement of agreement to resolve these cases, removing them from the pending national arbitration listing.

Sincerely,

Doug A. Tulino
Manager
Labor Relations Policies and Programs
Labor Relations

William Burrus
President
American Postal Workers Union,
AFL-CIO

Date 9/4/02

Enclosure

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
WWW.USPS.COM

MAXIMIZATION MEMORANDUM

Provides that PTFs that work 39 hours a week over any 5 day period for 6 consecutive months require the conversion of the senior PTF to full-time flexible schedule.

The only exception is, if the assignment that the PTF worked had been properly identified as a "residual" withheld vacancy to accommodate future excessed full time employees.

Once a PTF has qualified pursuant to the Memo, management may establish a full time assignment and post it for bid, but they cannot deny the conversion of the senior PTF. The assignment must have been identified as residual and withheld prior to the PTF qualifying pursuant to the Memo.

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

April 8, 1998

William Burrus
Executive Vice President
(202) 842-4246

Dear Mr. Pulcrano:

As per the parties agreement, the Postal Service provides to the union a computer printout each Pay Period identifying the Part Time Flexible employees who have worked 39 or more hours each week for 6 consecutive weeks. This identification does not fully satisfy the requirement to convert the senior PTF to full time but does identify the employees who have met the initial criteria.

A review of the printout indicates that the employees identified are only those who have "worked" 39 or more hours even though the parties have mutually agreed that paid leave hours are included in the required 39 or more hours. It is apparent that after agreement was reached that paid leave hours would be included, the Data Center did not adjust the program and the subsequent printouts do not properly identify all employees who have qualified for the initial requirement.

This is to request that the computer program be changed to include all paid hours for each week over 6 consecutive weeks.

Thank you for your attention to this matter.

Sincerely,

William Burrus
Executive Vice President

Samuel Pulcrano, Manager
Contract Administration APWU/NPMHU
Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb

UNITED STATES
POSTAL SERVICE

April 29, 1998

MAY 1998

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Dear Mr. Burrus:

This is in response to your April 8 correspondence alleging that the report identifying Part-Time Flexibles (PTFs) who have worked 39 or more hours each week for 6 consecutive months does not include all paid hours. Your letter misstated the criteria as 39 hours over a period of 6 consecutive weeks. In responding, I will assume you meant to indicate 6 months.

We have been advised by our Human Resource Information Systems (HRIS) department that the report does include the calculations for all paid leave hours for those PTFs. I hope this satisfies your inquiry.

If there are any further questions, please do not hesitate to contact me.

Sincerely,

Samuel M. Pulcrano
Manager
Contract Administration (APWU/NPMHU)

475 L'Enfant Plaza SW
Washington DC 20260

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

FEB 19 1988

Mr. Cliff J. Guffey
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

Re: Local
Renton, WA 98055
H4C-5R-C 34076

Dear Mr. Guffey:

On February 10, 1988, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management should consider paid leave hours when implementing the maximization provisions of Article 7.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. For conversion under the provisions of the Article 7 Memorandum of Understanding leave will be counted toward the 39 hour requirement provided it is not taken solely to achieve full-time status. In addition, all other provisions of the Article 7 Memorandum of Understanding must be met in order to convert the senior part-time flexible to full-time.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

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

Time limits were extended by mutual consent.

Sincerely,

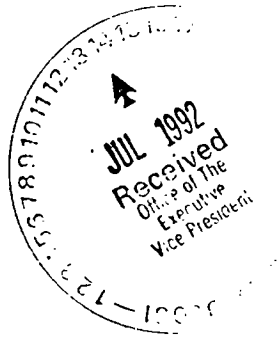
James L. Rosenhauer
Grievance & Arbitration
Division

Cliff J. Guffey
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

UNITED STATES POSTAL SERVICE
ROOM 9014
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
TEL (202) 268-3816
FAX (202) 268-3074

SHERRY A. CAGNOLI
ASSISTANT POSTMASTER GENERAL
LABOR RELATIONS DEPARTMENT

July 14, 1992



Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This is in response to your inquiry at our July 9, 1992, meeting as to whether the Employer agrees that the changes to Article 7, Section 3.B, do not apply to offices with less than 200 man years.

We are in agreement that the changes to Article 7, Section 3.B of the 1990 National Agreement are not applicable to offices with less than 200 man years.

Sincerely,

Sherry A. Cagnoli

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

July 22, 1991

William Burrus
Executive Vice President
(202) 842-4246

Dear Ms. Cagnoli:

This is in further regards to our exchange of letters and our meeting of June 20, 1991 concerning the impact of the arbitration award. The Union disagrees with your interpretation of Article 7, Section 2A, 2B and 2C, but notwithstanding our disagreement, the intent of my letter of June 20, 1991 was to inquire of the employer if you agree with the Union, that whatever the obligations, or lack of same of these provisions Article 7, Sections 2A, 2B and 2C are unaffected by the award.

The Union also wishes to determine if the employer agrees that the changes to Article 7, Section 3B does not apply to offices with less than 200 man years.

Please respond with your interpretation of the continuing application of these provisions.

Sincerely,

William Burrus
Executive Vice President

Sherry A. Cagnoli
Asst. Postmaster General
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

WB:rb

UNITED STATES POSTAL SERVICE
ROOM 9014
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
TEL (202) 268-3816
FAX (202) 268-3074

SHERRY A CAGNOLI
ASSISTANT POSTMASTER GENERAL
LABOR RELATIONS DEPARTMENT

July 18, 1991

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This letter is in further regard to the various issues raised in your June 20 letter concerning what you have characterized as the position of the APWU on the several "tests for converting employees to full time."

Your letter offers views on several specific contractual provisions. You state that the new language in Article 7, Section 3.B, of the 1990 National Agreement "does not alter the requirements of Article 12, Section 5, requiring 'to the extent possible, minimize the impact on full-time positions by reducing part-time flexible hours.'" As we indicated, without either side altering positions it might have concerning the interpretation of Article 12, we agree the Postal Service still must abide by the provisions of Article 12 notwithstanding the new language in Article 7, Section 3.B.

We do not agree with your assertions that Article 7, Sections 2.A, 2.B and 2.C are "obligations of the Employer to maximize full-time employment" or "specific tests" to maximize. Article 7, Section 2, provides descriptions of "permissive" management actions concerning the establishment of full-time assignments on a permanent or less than permanent basis.

We agree that the obligations established through Article 7, Section 3.C, and the Maximization Memorandum of Understanding were not altered by the new provisions of Article 7.

Sincerely,

Sherry A. Cagnoli

American Postal Workers Union, AFL-CIO
1300 L Street, NW, Washington, DC 20005

June 20, 1991

William Burrus
Executive Vice President
(202) 842-4246

Dear Ms. Cagnoli:

The new terms of Article 7 in the 1990 Contract change the full-time ratio from 90/10 to 80/20 in offices of 200 or more man years of employment.

This provision and the language that the maximization requirement of paragraph B "does not diminish the Employer's right" does not alter the requirements of Article 12, Section 5 requiring "to the extent possible, minimize the impact on full-time positions by reducing part-time flexible hours." In addition, Article 7, Section 2A, 1 and 2 continue as obligations of the Employer to maximize full-time employment.

The arbitration panel specifically limited the "general principle" to maximize and deliberately continued the "specific test" of Article 7, Section 2A, B and C, Section 3 C and D and the Maximization Memo requirments. Notwithstanding these changes to Article 7, the specific test for conversion to full-time and the history developed over the years remains unchanged.

The above represents the position of the American Postal Workers Union. If the Employer is not in agreement, I expect your prompt response in order to discuss the issues.

Sincerely,

William Burrus
Executive Vice President

Sherry Cagnoli
Asst. Postmaster General
U.S. Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

WB:rb

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

OCT 17 1988

Re: W. Burrus
Washington, DC 10005
H4C-NA-C 100

Dear Mr. Burrus:

On March 17, 1988, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether the Memorandum of Understanding on Maximization requires the conversion of an assignment to full-time when a part-time flexible employee meets all the criteria for conversion, while working in a full-time assignment temporarily left vacant by a full-time employee who is on leave.

The parties agree that the language of the Memorandum of Understanding on Maximization, which applies only to those offices of 125 or more man years of employment requires the conversion of the senior part-time flexible to full-time status. The return of the full-time employee from the extended absence may, dependent upon the local fact circumstances, require the reversion of this full-time flexible position pursuant to Article 12 of the National Agreement.

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

Time limits were extended by mutual consent.

Sincerely,

Daniel A. Kahn
Grievance & Arbitration
Division

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

American Postal Workers Union, AFL-CIO

Memorandum

Telephone
(202) 842-4246

817 Fourteenth Street, N.W.
Washington, D.C. 20005

From the Office of WILLIAM BURRUS
Executive Vice President

February 17, 1983

TO: Field Officers
Local Presidents

SUBJECT: Full-time Flexible Positions

Please find attached a letter of mutual interpretation between management and the union on implementing the Memo of Understanding creating full-time flexible positions.

The "initial" identification of the employees meeting the criteria of the Memo of Understanding has been accomplished at the Washington level. A computer print out has listed each postal facility of 150 man hours or more and identified employees who have met the criteria. This print out will be provided to the local office and the union is entitled to review and determine if all employees have been currently listed. In the event that a dispute arises over the identification of employees meeting the initial criteria a grievance should be filed and processed through Step 2 (if there is no resolve at an earlier step). Any grievance concerning implementation denied at Step 2 should be forwarded to my office for discussion at the Washington level.

The parties have agreed that the measuring period will be calculated as "39" hours per week even though the Memo requires "40" hours. This is to eliminate disputes over the working of PTF's 7 hours and 55 minutes per day to circumvent the Agreement. The 39 hours include sick and annual leave. PTF's working 39 hours per week over a 6 day period do not meet the requirements of the Memo unless it can be established that 2 PTF's were performing essentially the same duties on a continuous basis.

All conversions of PTF's beyond the initial measuring period (January 2, 1982 - July 2, 1982) will be accomplished through the normal contractual procedures and disputes will be channeled through the entire grievance procedure if necessary.

The initial measuring period is only for the conversions of the 1st group of PTF's. Each pay period after January 2, 1982 begins a new measuring period and PTF's meeting the requirements

will cause a conversion, consistent with the procedures.

The subject of an excessed full-time flexible has not been resolved at this time. The union's position is that the excessed employee becomes a full-time employee.

Conversion under this procedure does not affect, in any way, contractual requirements to convert employees through other contractual provisions.

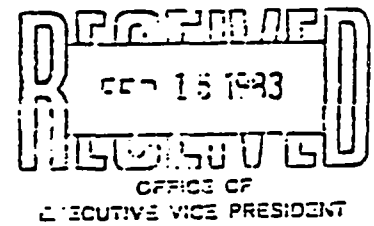
Employees assigned to full-time flexible positions may bid and compete for all vacancies consistent with the Agreement.

Full-time flexible employees will be included on the full-time seniority roll and will accrue seniority as per the National Agreement.

NOTE: Print outs have been provided the Coordinators and all full time Clerk Craft Field Officers.

WB:mc
w/ Attachment

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260



February 15, 1983

Mr. William Burrus
Executive Vice President
American Postal Workers Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Burrus:

This is in regard to matters concerning the provisions of the "maximization" Memorandum of Understanding and Letter of Intent between the American Postal Workers Union and the Postal Service. Pursuant to a series of discussions you have had with Postal Service representatives, the following represents our agreed-upon clarification of points in the Memorandum of Understanding and Letter of Intent:

. The initial measuring period will run from January 2, 1982, through July 2, 1982, so as to coincide with pay periods. Subsequent 6-month measuring periods will coincide with the pay periods that follow; e.g., January 16, 1982, through July 16, 1982.

. The senior part-time flexible employee is to be converted to full-time status consistent with certain criteria. Specifically, if the duties "causing" conversion are PS level 4, automated markup functions, the senior PTF on the level 4 markup roll is to be converted. If the duties causing the conversion are performed by a PS level 3, mail processor part-time flexible employee, the senior PTF on the level 3 mail processor roll is to be converted. If the duties justifying the conversion are performed by a PS level 4 or PS level 5 part-time flexible manual distribution employee, the senior PTF from the corresponding PS level 4 or PS level 5 roll would be converted. In situations where the duties "triggering" a conversion are a combination of manual and machine distribution, the functions

representing the majority of time will be the determining factor. Conversions of part-time flexibles in these instances would be consistent with Article 37, Section 2.D.5.

. The term "week" in the criteria is to mean Saturday through Friday.

. Part-time flexibles converted to full-time, pursuant to this Memorandum of Understanding, are to have their schedules established on the preceding Wednesday.

. Individuals will be subject to the bidding restrictions which exist in the National Agreement.

. Reversions or excessings of these individuals are to be in conjunction with Item 5 of the Letter of Intent, and in accordance with Article 12 of the National Agreement and applicable provisions of local memoranda of understanding.

. Vacated positions which had been created pursuant to this memorandum are not to be posted or filled.

. Grievances filed at the local level relating to the initial period of implementation are to be forwarded from Step 2 to the national committee for review.

. The Postal Service will identify part-time flexibles in the designated offices who have worked 40 or more hours per week over a 6-month period. The listing will be sent to the offices for review to determine if all other criteria for conversion have been met. The local American Postal Workers Union may review the list of names provided to each of the designated offices.

Bruce Evans, of my staff, is available should you have any questions regarding the foregoing.

Sincerely,

James C. Gildea
Assistant Postmaster General
Labor Relations Department

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

September 6, 1983

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Burrus:

This is in regard to recent matters we discussed concerning the "Maximization" memorandum of understanding. The Postal Service agrees with your understanding that the intent of the memorandum provides that full-time flexibles have flexible reporting times, flexible nonscheduled days, and flexible reporting locations. Thus, it is not intended that these individuals be "classified" as unassigned regulars and assigned to residual assignments pursuant to Article 37, Section 3.F.10; rather their schedules may vary depending upon operational requirements.

Sincerely,

Bruce Evans
Labor Relations Executive
Labor Relations Department

American Postal Workers Union, AFL-CIO
817 Fourteenth Street N.W. Washington, D.C. 20005 • (202) 842-4246

WILLIAM BURRUS
Executive Vice President

August 25, 1983

Bruce Evans
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

Dear Mr. Evans:

In further regard to our ongoing discussions on the Maximization Memorandum of Understanding the Central and Southern Regions are interpreting the Agreement as permitting the assignment of full-time flexible employees to residual vacancies under the provisions of Article 37, Section 3 F 10 (unassigned regulars). It is my clear understanding of our Agreement on the Memorandum that such employees will be treated for all purposes as being assigned to duties, hours and days of work that may be changed as per the memo, with proper notice.

It is also my understanding that the Postal Service has committed to providing all of the printouts from June 16, 1983 to August 31, 1983 by September 1, 1983. Failure to provide such printouts will create a back-pay liability from the date an affected employee should have been converted to full-time as per the Memorandum.

In the event that the position of the Postal Service differs with the above I am available to meet to discuss these issues at your convenience.

Sincerely,

William Burrus,
Executive Vice President

WB:mc

90/10 SETTLEMENT

JOINT STATEMENT OF CLARIFICATION OF THE

REMEDY

The parties hereby agree to clarify the prospective remedy of the 90/10 settlement as follows:

1. The 365 day restriction for bidding pursuant to Article 37.3.B.2, will begin the day the employee should have been converted to full-time Distribution Clerk, Machine.

2. The calculation of time for step increases for promotions will begin on the day the employee was actually converted to full-time and not when he should have been converted.

The settlement of this dispute has no impact on the pending grievance over proper compensation and step placement when promoted.

William J. Downes
Director
Office of Contract Administration
Labor Relations Department
AFL-CIO

DATE 6-29-89

William Burrus
Executive Vice President
American Postal Workers
Union,

DATE 7-14-89

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

The United States Postal Service, the American Postal Workers Union, AFL-CIO, and the National Association of Letter Carriers, AFL-CIO, hereby agree to the following remedy for the postal installations which have 200 or more man years of employment in the regular work force and have violated the 90/10 staffing requirement of Article 7, Section 3.A. The parties agree further to remand the following remedy to the aforementioned installations for application of the terms of this Memorandum of Understanding.

REMEDY FOR PAST VIOLATIONS:

I. The remedy shall be retroactive to November 6, 1986, for the American Postal Workers union, AFL-CIO and for the National Association of Letter Carriers, AFL-CIO.

II. Any installation with 200 or more man years of employment in the regular work force which is not presently in compliance with Article 7, Section 3.A, management shall immediately convert sufficient part-time flexibles to full-time regulars to meet the 90/10 staffing requirement.

III. In any installation with 200 or more man years of employment in the regular work force which was not in compliance with the 90/10 staffing requirement in any particular accounting period during the period commencing November 6, 1986, and ending when the facility is in compliance, management will:

   A. Identify those employees who would have been earlier converted to full-time regular had the installation been in compliance with the 90/10 staffing requirement.

   B. Determine the date on which each employee should have been converted.

IV. Each employee shall then be paid $35.00 for each week commencing on the date the employee should have been converted to full-time regular and ending on the date the employee was actually converted.

PROSPECTIVE REMEDY:

I. Any installation with 200 or more man years of employment in the regular work force which fails to maintain the 90/10 staffing ratio in any accounting period, shall immediately convert and compensate the affected part-time employee(s) retroactively to the date which they should have been converted as follows:

A. Paid the straight time rate for any hours less than 40 hours (five 8 hour days) worked in a particular week.

B. Paid the 8 hour guarantee for any day of work beyond five (5) days.

C. If appropriate, based upon the aforementioned, paid the applicable overtime rates.

D. Further, the schedule to which the employee is assigned when converted will be applied retroactively to the date the employee should have been converted and the employee will be paid out-of-schedule pay.

E. Where application of Items A-D, above, shows an employee is entitled to two or more rates of pay for the same work or time, management shall pay the highest of the rates.

William J. Downes
Director
Labor Relations Department

DATE 4/14/89

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

DATE

Lawrence G. Hutchins
Vice President
National Association of
Letter Carriers, AFL-CIO

DATE 4/14/89

CROSS CRAFT REASSIGNMENTS

The former language provided that excessed employees had to be reassigned within their craft up to 100 miles before considering reassignments to other crafts within 100 miles. The new language provides for the reassignment of APWU represented employees to other APWU crafts within 100 (previous and current language provides for the reassignment beyond 100 miles after consultation at the regional level). If more than one assignment is available employees will select based on seniority. This eliminates the right of management to reassign an employee receiving saved grade to a vacancy in their former level, if other assignments are available to which the employee would prefer assignment.

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: H7C-NA-C 72
W. Burrus
Washington, DC 20005

Dear Mr. Burrus:

On March 9, 1990, we met to discuss the above-captioned case at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether PTF employees may be assigned across craft lines without satisfying the limitations of Article 7.2 of the National Agreement.

During our discussion, we mutually agreed that the assignment of PTF employees across craft lines is controlled by the express language of Article 7.2 of the National Agreement as interpreted by national level arbitrators. We further agreed to fully and finally settle this grievance and close the case on this basis.

Please sign and return the enclosed copy of this letter indicating that the APWU concurs with this interpretation and as your acknowledgment of agreement to close this case.

Time limits were extended by mutual consent.

Sincerely,

Arthur Wilkinson
Grievance & Arbitration
Division

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

DATE 4/4/90

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE

AND

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: Cross Craft Reassignments

In instances where employees represented by the APWU will be involuntarily reassigned outside the installation, employees may be reassigned to other APWU crafts outside the installation. Such employees who meet the minimum qualifications will be afforded their option of available vacancies by seniority.

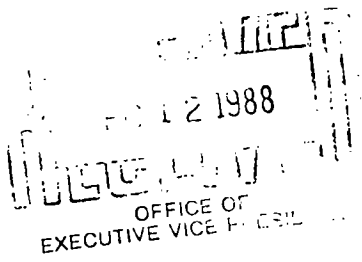
This memorandum does not affect any other rights that Motor Vehicle Craft employees may possess under the provisions of Article 12.

Sherry A. Cagnoli
Assistant Postmaster General
Labor Relations Department

Date: 8/19/92

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

Date: 8/19/92



UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. Lawrence G. Hutchins
Vice President
National Association of
Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

DEC 5 1988

Re: Class Action
Garnett, KS 66032
H4N-4H-C 27353

Dear Mr. Hutchins:

On October 19, 1988, a meeting was held with the NALC Director of City Delivery, Btian Farris, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether a violation occurs as a result of the assigning of a clerk to carrier craft duties in the Garnett, Kansas facility.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We agree that the Memorandum of Understanding which states:

> "It is understood by the parties that in applying the provisions of Articles 7, 12 and 13 of the 1984 National 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,"

does not affect or change the provision of Articles 7, 12 and 13 but instead, merely specifies the crafts to which they will be applied.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. Lawrence G. Hutchins
Vice President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

July 11, 1988

Re: H1N-3A-C 32186
Arlington, TX

H4N-5K-C 14026
Glendale, AZ

Dear Mr. Hutchins:

On July 6, 1988, we held prearbitration discussions of the above-referenced grievances.

During our discussion, we mutually agreed to the continued application of the principles contained in the June 22, 1976, Memorandum to the Regional Postmasters General on the subject of "Utilization of Casual Employees" by James V.P. Conway, the then Senior Assistant Postmaster General, with the understanding that the crossing of craft lines by part-time flexibles or full-time employees must meet the qualifying conditions outlined in Article 7.2 of the National Agreement.

We further agreed to remand the above-captioned cases to step 3 (regional level) for a facts application of the above cited understanding of the parties and consistent with the applicable national level arbitration decisions.

Please sign and return the enclosed copy of this letter acknowledging your agreement to remand these cases, withdrawing these cases from the national arbitration listings.

Sincerely,

Stephen W. Furgeson
General Manager
Grievance and Arbitration
Division

Lawrence G. Hutchins
Vice President
National Association of Letter
Carriers, AFL-CIO

SENIOR ASSISTANT POSTMASTER GENERAL
EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

June 22, 1976

MEMORANDUM TO: Regional Postmasters General

SUBJECT: Utilization of Casual Employees

As a result of a number of grievances received by this office, it is necessary to reaffirm the responsibilities of the U. S. Postal Service pursuant to the provisions of the National Agreement regarding the utilization of casual employees. The provisions in Article VII, Section 1 B 1 of the 1975 National Agreement state in part, "during the course of a service week, the employer will make every effort to ensure that qualified and available part-time flexible employees are utilized at the straight time rate prior to assigning such work to casuals."

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 a 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.

Furthermore, in keeping with the intent of the National Agreement that casuals are to be utilized as a supplemental work force, every effort should be made based on individual circumstance to utilize part-time flexible employees across craft lines (see Article VII, Section 2) in lieu of utilizing casual employees.

Please ensure that local officials are made aware of these guidelines concerning the utilization of casual employees.

James V. P. Conway

cc: Regional Directors, E&LR
Mr. Rolger
Mr. Dorsey

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

Jurisdictional issues, arising under the Modified Article 15 pilot program, will not be addressed by arbitrators in that forum.

Whenever jurisdictional issues are raised under the Modified Article 15 pilot program, and no resolution is reached by the parties at Step 2, the Union may appeal such issues to the regional level of the regular grievance and arbitration procedure. Such issues will be processed pursuant to those provisions under Article 15 of the National Agreement.

William J. Downes
Director
Office of Contract
Administration
U.S. Postal Service

Date 8/29/89

Francis J. Conners
Executive Vice President
National Association of
Letter Carriers, AFL-CIO

Date 10/3/89

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

Date 9.20.89

American Postal Workers Union, AFL-CIO

817 Fourteenth Street, N.W., Washington, D.C. 20005 • (202) 842-4246

WILLIAM BURRUS
Executive Vice President

March 28, 1985

Dear Mr. Fritsch:

A review of recent regional level arbitration decisions indicates that several regional level arbitrators are interpreting contractual provisions contrary to national level decisions. In cases numbered NIM-IM-C-14106 and NIC-IM-C-13122 the arbitrators ruled that Article 7 "gives management the right to assign workers across craft lines when sufficient work is not available within the assigned craft." These decisions appear to ignore the national level decision of Arbitrator Block in case number H8S-5F-C-802 where the controlling language was interpreted "that management's right to cross craft lines is substantially limited," requiring exceptionally heavy work in one craft and light work in the other craft. It appears that the second requirement of heavy work in the gaining craft was ignored.

I do not seek to overturn the regional level decision in raising this issue through correspondence, but to determine if the parties at the national level have different interpretatins of the Block Award. And in the event the parties are in agreement I question whether the process is well served through conflicting lower level awards.

Sincerely,

William Burrus,
Executive Vice President

Tom Fritsch,
Assistant Postmaster General
Labor Relations
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

WB:mc

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

April 5, 1985

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Burrus:

This is in response to your March 28 letter to Assistant Postmaster General Thomas J. Fritsch regarding the application of Article 7, Section 2, by two regional regular panel arbitrators in recent awards issued by them.

We are not in disagreement with respect to our contractual obligations under Article 7 as set forth by Arbitrator Bloch's award in case H8S-5F-C-8027. We are also cognizant of the cautions set forth at the bottom of page 8 and top of page 9 of the award, where the arbitrator stated:

> Particular care should be employed in reading this Opinion, for the finding is closely confined to the particular facts of the day.

and on page 10, where he states:

> In each case, the particular facts and circumstances must be scrutinized.

We do not view either of the regional awards as being contrary to the dicta provided in the Bloch award. Apparently, both Arbitrator Dennis and Arbitrator Stutz were satisfied that the particular facts in the cases presented to them were sufficient to establish that the Employer had carried the burden of

proving there was "insufficient work" on the day(s) in question and that the crossing of crafts in the circumstances which existed was justified. In the national level award, Arbitrator Bloch found that:

> In this case, the evidence relevant to this particular fact situation fails to sustain Management's responsibility of showing "insufficient" work in the Letter Carrier unit.

We are not in disagreement with the Bloch opinion that ". . . Management's right to cross craft lines is substantially limited." As indicated, however, the two regional panel arbitrators were apparently satisfied that the requisite conditions were met in the particular facts in each case to justify the crossing of craft lines as provided in Article 7, Section 2.B.

Sincerely,

W. E. Henry

William E. Henry, Jr.
Director
Office of Grievance and
Arbitration
Labor Relations Department

American Postal Workers Union, AFL-CIO
1300 L Street, NW, Washington, DC 20005

November 16, 1989

William Burrus
Executive Vice President
(202) 842-4246

Dear Mr. Mahon:

This is to respond to your letter of November 7, 1989 regarding the involuntary reassignment of part-time flexible employees and the requirement that the employer be in compliance with Article 7.3A (90/10) under the circumstances discussed.

The employer's position on Article 7.3A is consistent with the parties understanding in our discussions and the Union concurs.

Regarding the employers position on Article 12, Section 5C8, the provisions for the involuntary excessing of part-time flexible employees is governed by the established "quota" of PTF employees "for the craft.....". Therefore, the application of the excessing procedures is limited by the quota of full-time to part-time employees per craft. The parties have not discussed the quota applicable for staffing of craft compliments and I await the employer's views on the number to be applied.

Notwithstanding, the exchange of positions on this subject between Emmett Andrews and Dennis Weitzel the Union interprets Article 12.5C8 as limiting the involuntary excessing of PTFs to those employees beyond the quota.

Sincerely,

William Burrus
Executive Vice President

Joseph J. Mahon, Jr.
Assistant Postmaster General
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

WB:rb

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

November 7, 1989

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

Dear Mr. Burrus:

In a recent conversation with members of my staff, you indicated that it is the position of the American Postal Workers Union that Article 12, Section 8, of the National Agreement prohibits the involuntary reassignment of part-time flexible employees.

The position of the Postal Service is that the provisions of Article 12.8. do not preclude the involuntary reassignment of part-time flexible employees.

The position of the Postal Service has remained unchanged since at least 1976 when this same question was raised by former APWU Director, Industrial Relations, Emmet Andrews. After being advised of the Postal Service's position on the issue, there is no indication that the APWU pursued the matter any further.

Further, it is the Postal Service's position that a 200 or more manyear facility that has excessed in accordance with Article 12 shall be in compliance with Article 7.3.A (90/10) at the close of the accounting period in which the excessing has been completed.

Should you have any additional questions concerning this matter, please contact Anthony J. Vegliante at 268-3811.

Sincerely,

Joseph J. Mahon, Jr.
Assistant Postmaster General

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137

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

March 8, 1976

MAR 11 1976

Mr. Emmet Andrews, Director
Industrial Relations
American Postal Workers Union, AFL-CIO
817 - 14th Street, N.W.
Washington, D.C. 20005

Dear Mr. Andrews:

This is in further response to your letter of January 8, 1976 concerning the application of certain provisions of Appendix A of the 1975 Agreement.

You indicate it is the position of the American Postal Workers Union that the reassignment of a clerk craft employee pursuant to Appendix A, Section II, C, 5, b should be treated as a detail for the first 180 days. As Mr. Gillespie and I explained to you and John Morgen at a January 19 meeting, we fail to see where the Agreement provides for the application of the 180 day rule to all reassignments outside of the installation. It is our position that the 180 day rule is intended to be applied under the circumstances set forth in Section II, C, 7 and under circumstances encompassed by Section II, B, 7. Under all other circumstances, an employee reassigned to another installation would be eligible to exercise his seniority for preferred duty assignment immediately upon reassignment. If it had been the intent of the parties to apply the 180 day rule to situations encompassed solely by Section II, C, 5, b then we believe it would have been expressly stated in that particular provision.

In reference to the issue you raised concerning the application of various sections of Appendix A, Section II, C.8, which concerns the reassignment of part-time flexible employees, our review does not indicate that the language precludes the involuntary reassignment of part-time flexible employees. In any case, however, the seniority of a part-time flexible employee who is reassigned, whether voluntarily or involuntarily, would be established by Section II, C.8, b or c, whichever is applicable. We further believe that Paragraphs 8, e, f and g are only applicable to part-time flexibles who are involuntarily reassigned. The

applicability of these principles to part-time employees is consistent with the applicability of the same principles to full-time employees.

Sincerely,

Dennis R. Weitzel

Dennis R. Weitzel, Director
Office of Contract Analysis
Labor Relations Department

American Postal Workers Union, AFL-CIO
817 14TH STREET, N. W., WASHINGTON, D. C. 20005 137

12137 Cpy. A

January 8, 1976

Mr. Dennis Weitzel
Director
Office of Contract Analysis
Labor Relations Department
U. S. Postal Service
Washington, D. C.

Dear Mr. Weitzel:

A question has recently arisen regarding Appendix A, Section II, C, 5, b, "Reassigment to other installations after making reassignments within the installation".

The National Executive Board of the American Postal Workers Union has taken the position that any Clerk Craft employee being excessed out of his office would be subject to the 180 detail provisons specified in Subsection 7, a of Appendix A, Section II, C.

Our Coordinator in the Central Region has advised us that part-time flexible employees in that Region are being advised that they have 3 options, they can retire, they can resign or they can be involuntarily excessed. In regard to these options it is the position of the American Postal Workers Union that when a part-time flexible employee exercises the option to be reassigned in accordance with Appendix A, Section II, C, 8 he would retain his seniority as provided in Subsection 8,a. In addition such reassignment, which could be classified as a voluntary action, would entitle the employee to the protection of Subsection 8, f & g. We believe that a part-time flexible electing such an option would lose neither his seniority or his retreat rights as provided in Subsection 8, b, f and g.

I would appreciate your advising me of the Postal Service's position on these matters at your earliest convenience.

Sincerely yours,

Emmet Andrews, Director
Industrial Relations

EA/ac

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

January 7, 1976

Mr. Emmet Andrews
Director of Industrial Relations
American Postal Workers Union, AFL-CIO
817 - 14th Street, NW
Washington, DC 20005

Re: Appendix A, Section II, C5b (5)

Dear Mr. Andrews:

This is in response to your letter of December 19, 1975 concerning the rights of an employee who changes to part-time flexible in lieu of being reassigned to another installation.

An employee who has exercised his option pursuant to Appendix A, Section II, C5b (5) to change to part-time flexible in lieu of involuntary reassignment is no different than any other part-time flexible employee. Such employee has no superior right to be converted to a full-time position that may subsequently arise in his installation. Should a full-time position become vacant, management may fill the position by converting a part-time flexible employee from the top of the part-time flexible roster or pursuant to Appendix A, Section II, B2, management may withhold such position for a full-time employee who may be excessed from another installation.

If you have any questions concerning this matter, please advise.

Sincerely,

Dennis R. Weitzel

Dennis R. Weitzel, Director
Office of Contract Analysis
Labor Relations Department

American Postal Workers Union, AFL-CIO
817 14TH STREET, N. W., WASHINGTON, D. C. 20005

12137 137

April 9, 1976

Mr. Dennis Weitzel
Director
Office of Contract Analysis
Labor Relations Department
U. S. Postal Service
Washington, D. C.

Dear Mr. Weitzel:

I have been studying your letter of March 8, 1976 relative to our areas of disagreement regarding the application of Appendix A, Section II. On this occasion I am a loss to understand your interpretation of Appendix A, Section C 8, which concerns the reassignment of part-time flexible employees.

I concur with your conclusion that there is nothing in the language of C 8 which precludes the involuntary reassignment of part-time flexible employees. The language of C 8, in my opinion, deals only with the options available to a part-time flexible employee after management has declared him excess. Since employees do not declare themselves excess, it seems to me that any action taken by management in declaring employees excess makes the action involuntary. The selection of an employee of an office or craft in which to seek refuge has nothing to do with the excessing action. It further appears to me that you are confusing the issue with the request of an employee to be transferred to another craft or another office.

Once a part-time flexible is declared excess, C 8 provides some options which he may exercise if positions are declared available by management. It seems to me that there would be no purpose in C 8 whatsoever if you eliminate the protections outlined in the several items regarding seniority and retreat rights.

I will be available to discuss this matter with you, should you desire, but I do ask that you reconsider your interpretation as a result of this letter.

Sincerely yours,

Emmet Andrews, Director
Industrial Relations

EA/ac

American Postal Workers Union, AFL-CIO
1300 L Street, NW, Washington, DC 20005

May 18, 1994

William Burrus
Executive Vice President
(202) 842-4246

Dear Mr. Downes:

Pursuant to the provisions of the National Agreement, this is to initiate a Step 4 grievance over the employer's interpretation of Article 7. By letter of May 12, 1994 you responded that "..Kelly Girls may be used to perform short-term work and shall be considered as casual employees pursuant to Article 7.2B of the National Agreement".

This response further states that the union agreed in a June 28, 1989 grievance settlement that "Kelly Girls may be used to perform short-term work and shall be considered as casual employees".

The referenced 6-28-89 grievance was intended to resolve a specific fact situation and was not intended to interpret Article 7.2.B of the National Agreement. The settlement, by its specific terms, does not represent the position of the union on the use of "Temporary Agency" employees to perform bargaining unit work.

The union interprets the contract as prohibiting the use of employees of temporary agencies to perform bargaining unit work. All bargaining unit work must be assigned to bargaining unit employees, excluding the exceptions recognized by Article 1.6 and Article 32.

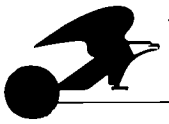
Please schedule a meeting to discuss this issue at your earliest convenience.

Sincerely,

William Burrus

William Burrus

William J. Downes, Manager
Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260



LABOR RELATIONS

UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

May 12, 1994

MAY 1994

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This letter is in response to your March 10 correspondence requesting the Postal Service's interpretation as to the use of Kelly Girls or other temporary agencies to perform bargaining unit work. Specifically, it is the unions contention that the contract prohibits the use of employees of temporary agencies to perform bargaining unit work.

Pursuant to the enclosed June 28, 1989, step four settlement, temporary employees (i.e., Kelly Girls) may be used to perform short-term work and shall be considered as casual employees pursuant to Article 7.2.B of the National Agreement.

If there are any questions regarding the foregoing, please contact Thomas J. Valenti of my staff at (202) 268-3831.

Sincerely,

William J. Downes
Manager
Contract Administration (APWU/NPMHU)
Labor Relations

Enclosure

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

Re: W. Burrus
Washington, DC 20005
H7C-NA-C 35

Dear Mr. Burrus:

On several occasions, the latest being June 6, 1989, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether the use of "Kelly Girls" to perform the short term work during the acceptance test period of the Multi-Line Optical Character Reader (MLOCR) retro fit at the Suburban Maryland facility was a violation of the National Agreement.

During our discussion, we mutually agreed that the use of temporary employees (ie., Kelly Girls) in the circumstances described in this case shall be considered as casuals pursuant to Article 7.2.B of the National Agreement. Accordingly, we agreed to settle this case.

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

Time limits were extended by mutual consent.

Sincerely,

Samuel M. Pulcrano
Grievance and Arbitration
Division

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

DATE 6-28-89

UNITED STATES
POSTAL SERVICE

March 19, 1998

VICE PRESIDENTS, AREA OPERATIONS

SUBJECT: 80/20 Full-time Part-time Percentage Requirement

This memorandum is to bring your attention to correspondence (copy attached) from Mr. William Burrus, Executive Vice President of the American Postal Workers' Union, AFL-CIO (APWU), alleging specific violation of provisions of the collective bargaining agreement in installations in your Area. Specifically, Mr. Burrus provides a list of installations alleging violations of Article 7 provisions, which require maintaining a minimum of 80 percent full-time, 20 percent part-time career employee mix.

We request that you investigate these allegations and, if true, correct the situation by making any necessary adjustments by April 30, 1998. Please provide the information to Headquarters' Labor Relations office using the attached form so we can make appropriate notification to the union at this level. If you are legitimately withholding duty assignments in the installation which puts it in compliance when counted, please provide that information as well.

As expressed in the February 18 memorandum signed by Messrs. Runyon, Coughlin, and Henderson, we are committed to comply with the collective bargaining agreements at all levels of the Postal Service in order to preserve the integrity of those agreements and to build better relations with our unions and employees.

Thank you in advance for your cooperation in this matter. If there are any questions, or you need assistance from this level, please have your designee contact Peter A. Sgro of the Labor Relations Contract Administration staff at (202) 268-3824.

Nicholas F. Barranca
Vice President
Operations Support

John E. Potter
Vice President
Labor Relations

Attachments (2)

cc: Mr. Runyon
Mr. Coughlin
Mr. Henderson

475 L'Enfant Plaza SW
Washington DC 20260

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

May 26, 1995

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street N.W.
Washington, DC 20005-4128

Dear Bill:

This letter is in response to your correspondence of May 9 concerning the application of the Maximization procedures in the Santa Ana District.

There is no dispute relative to the proper application of the Memorandum of Understanding Re: Maximization/Full-time Flexible - APWU. As discussed by you and Charles Baker of my staff, when the criteria established by the Memorandum are met in postal installations with 125 or more man years of employment, the senior Part-time Flexible is converted to Full-time Flexible status.

Any confusion between the Memorandum of Understanding on maximization and Article 7, Section 3.C of the National Agreement which may have existed in the Santa Ana District has been addressed by Pacific Area Labor Relations.

If you have any questions regarding the foregoing, please contact Charles Baker of my staff at (202) 268-3842.

Sincerely,

Anthony J. Vegliante
Manager
Contract Administration APWU/NPMHU

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND
AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: Conversions under the Maximization Memorandum

As discussed, when a full-time assignment(s) is being withheld in accordance with Article 12, the subsequent backfilling of the assignment(s) will not count towards the time considered for maximizing full-time duty assignments, in accordance with the Memorandum of Understanding.

The parties also recognize that employees are to be converted to full-time consistent with the memorandum, provided the work being performed to meet maximization qualification is not being performed on assignments(s) described above.

Sherry A. Cagnoli 8/19/92
Sherry A. Cagnoli
Assistant Postmaster General
Labor Relations Department
U.S. Postal Service

William Burrus
Executive Vice President
American Postal Workers
Workers Union, AFL-CIO

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

February 8, 1991

William Burrus
Executive Vice President
(202) 842-4246

Dear Mr. Mahon:

I am advised that local offices are refusing to convert part-time employees to full-time status as per the Maximization Memorandum of Understanding. The reason given is that "positions" are being withheld pursuant to Article 12.

Employees converted to full-time pursuant to the Memorandum do not occupy full-time positions as defined in Article 12. The withholding of vacancies is intended to accommodate excessed employees by placement in residual vacancies vacated by full-time regular employees. The parties have agreed by separate Memorandum that withheld vacancies must be identified. In that employees converted under the Memorandum are only assigned to duties, hours and days of work, withholding will not accommodate excessed full-time employees.

It is the position of the American Postal Workers Union that PTFs who meet the requirements of the Memorandum must be converted to full-time notwithstanding the withholding of full-time positions pursuant to Article 12.

Please respond as to the employer's position on this issue.

Sincerely,

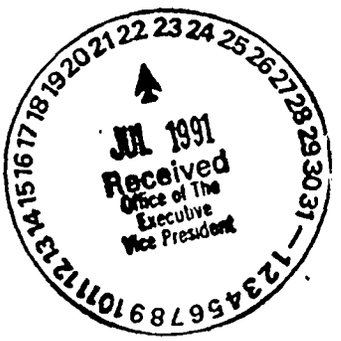
William Burrus
Executive Vice President

Joseph J. Mahon, Jr.
Asst. Postmaster General
U.S. Postal Service
475 L'Enfant Plaza SW
Washington, DC 20260-4100

WB:rb

UNITED STATES POSTAL SERVICE
ROOM 9014
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
TEL (202) 268-3816
FAX (202) 268-3074

SHERRY A. CAGNOLI
ASSISTANT POSTMASTER GENERAL
LABOR RELATIONS DEPARTMENT



July 18, 1991

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This letter is in further regard to the various issues raised in your June 20 letter concerning what you have characterized as the position of the APWU on the several "tests for converting employees to full time."

Your letter offers views on several specific contractual provisions. You state that the new language in Article 7, Section 3.B, of the 1990 National Agreement "does not alter the requirements of Article 12, Section 5, requiring 'to the extent possible, minimize the impact on full-time positions by reducing part-time flexible hours.'" As we indicated, without either side altering positions it might have concerning the interpretation of Article 12, we agree the Postal Service still must abide by the provisions of Article 12 notwithstanding the new language in Article 7, Section 3.B.

We do not agree with your assertions that Article 7, Sections 2.A, 2.B and 2.C are "obligations of the Employer to maximize full-time employment" or "specific tests" to maximize. Article 7, Section 2, provides descriptions of "permissive" management actions concerning the establishment of full-time assignments on a permanent or less than permanent basis.

We agree that the obligations established through Article 7, Section 3.C, and the Maximization Memorandum of Understanding were not altered by the new provisions of Article 7.

Sincerely,

Sherry A. Cagnoli

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

June 20, 1991

William Burrus
Executive Vice President
(202) 842-4246

Dear Ms. Cagnoli:

The new terms of Article 7 in the 1990 Contract change the full-time ratio from 90/10 to 80/20 in offices of 200 or more man years of employment.

This provision and the language that the maximization requirement of paragraph B "does not diminish the Employer's right" does not alter the requirements of Article 12, Section 5 requiring "to the extent possible, minimize the impact on full-time positions by reducing part-time flexible hours." In addition, Article 7, Section 2A, 1 and 2 continue as obligations of the Employer to maximize full-time employment.

The arbitration panel specifically limited the "general principle" to maximize and deliberately continued the "specific test" of Article 7, Section 2A, B and C, Section 3 C and D and the Maximization Memo requirments. Notwithstanding these changes to Article 7, the specific test for conversion to full-time and the history developed over the years remains unchanged.

The above represents the position of the American Postal Workers Union. If the Employer is not in agreement, I expect your prompt response in order to discuss the issues.

Sincerely,

William Burrus
Executive Vice President

Sherry Cagnoli
Asst. Postmaster General
U.S. Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

WB:rb

American Postal Workers Union, AFL-CIO

817 [illegible] Street N.W., Washington D.C. 20006 • (202) 842-4246

WILLIAM BURRUS
Executive Vice President

September 24, 1984

James Gildea, Assistant Postmaster General
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

HIC-NA-C
Assigned to McDonald 117

Dear Mr. Gildea:

In accordance with provisions of Article 15 of the National Agreement the union submits to Step 4 of the grievance procedure the employer's right to revert vacant full-time regular duty assignments while continuing full-time flexible duty assignments as explained in your response of September 20, 1984

The language of the Letter of Intent implementing the Maximization Agreement is clear at paragraph No. 5 in that "any reductions in full-time employees' positions shall be from among those position(s) converted pursuant to this Memorandum of Understanding until they are exhausted."

Notwithstanding your references to our discussions during which the union offered several options that could result in a written clarification of this issue, the employer has refused such offers and the language of the agreement negotiated in the 1981 Contract is clear and precludes such reversions of full-time regular assignments.

Please contact my office for discussion of this grievance.

Sincerely,

William Burrus,
Executive Vice President

WB:mc

UNITED STATES POSTAL SERVICE
ROOM 9014
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
TEL (202) 268-3816
FAX (202) 268-3074

OFFICE OF THE
ASSISTANT POSTMASTER GENERAL
LABOR RELATIONS DEPARTMENT

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: H1C-NA-C 117
M. Biller
Washington, DC 20005

Dear Mr. Burrus:

Recently, you met with Ms. Kathleen Sheehan to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management violated the National Agreement by maintaining our position, on September 20, 1984, that "the reversion or excessing of a FTR position does not necessarily have to be preceded by the reversion or excessing of all FTF positions, provided the actions taken are otherwise in compliance with Article 12 and local memoranda of understanding."

Management's position regarding this issue remains consistent with its position expressed in the February 15, 1983 letter from James C. Gildea to you.

Pursuant to the Letter of Intent and discussions with the APWU which were memorialized in the February 15, 1983 letter, it is our position that the provisions of Article 12 will govern excessing. However, when excessing is required from a section (or sections) as identified in a Local Memorandum of Understanding, any reduction in the number of full-time duty assignments within the section (or sections) shall be from among those assignment(s) in the same position designation and salary level converted pursuant to this Maximization Memorandum until they are exhausted and prior to the abolishment or reversion of full-time fixed assignment(s).

The APWU was made aware of the Service's position at least as early as July 8, 1982, during discussions of the 1981 Maximization Memorandum and Letter of Intent, but the Union filed no grievance on the matter. Again, the Union was informed of management's position by the February 15, 1983 letter from Gildea to you, yet no grievance was filed at that time either. The Union's September 24, 1984 attempt to grieve the matter is considered untimely or at least implies tacit agreement with management's position until that date.

In view of the fact that management's interpretation and application of paragraph 5 of the Letter of Intent is the most reasonable interpretation and went unchallenged in the grievance-arbitration procedure for almost two years, this grievance is denied.

Time limits were extended by mutual consent.

Sincerely,

Karen Intrater
Acting General Manager
Grievance & Arbitration
Division

Date 10/4/91

American Postal Workers Union, AFL-CIO

Memorandum

Telephone
(202) 842-4246

817 Fourteenth Street, N.W.
Washington, D.C. 20005

From the Office of WILLIAM BURRUS
Executive Vice President

February 17, 1983

TO: Field Officers
Local Presidents

SUBJECT: Full-time Flexible Positions

Please find attached a letter of mutual interpretation between management and the union on implementing the Memo of Understanding creating full-time flexible positions.

The "initial" identification of the employees meeting the criteria of the Memo of Understanding has been accomplished at the Washington level. A computer print out has listed each postal facility of 150 man hours or more and identified employees who have met the criteria. This print out will be provided to the local office and the union is entitled to review and determine if all employees have been currently listed. In the event that a dispute arises over the identification of employees meeting the initial criteria a grievance should be filed and processed through Step 2 (if there is no resolve at an earlier step). Any grievance concerning implementation denied at Step 2 should be forwarded to my office for discussion at the Washington level.

The parties have agreed that the measuring period will be calculated as "39" hours per week even though the Memo requires "40" hours. This is to eliminate disputes over the working of PTF's 7 hours and 55 minutes per day to circumvent the Agreement. The 39 hours include sick and annual leave. PTF's working 39 hours per week over a 6-day period do not meet the requirements of the Memo unless it can be established that 2 PTF's were performing essentially the same duties on a continuous basis.

All conversions of PTF's beyond the initial measuring period (January 2, 1982 - July 2, 1982) will be accomplished through the normal contractual procedures and disputes will be channeled through the entire grievance procedure if necessary.

The initial measuring period is only for the conversions of the 1st group of PTF's. Each pay period after January 2, 1982 begins a new measuring period and PTF's meeting the requirements

will cause a conversion, consistent with the procedures.

The subject of an excessed full-time flexible has not been resolved at this time. The union's position is that the excessed employee becomes a full-time employee.

Conversion under this procedure does not affect, in any way, contractual requirements to convert employees through other contractual provisions.

Employees assigned to full-time flexible positions may bid and compete for all vacancies consistent with the Agreement.

Full-time flexible employees will be included on the full-time seniority roll and will accrue seniority as per the National Agreement.

NOTE: Print outs have been provided the Coordinators and all full time Clerk Craft Field Officers.

WB:mc
w/ Attachment

MEMORANDUM OF INTENT
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
AMERICAN POSTAL WORKERS UNION, AFL-CIO

RE: TE/PTF CONVERSION MOU - WHAT CONVERSIONS COUNT TOWARD EMPLOYER OBLIGATION

This Memorandum of Intent (MOI) details the understanding between the parties of what counts toward the employer's obligation under Section 1.B.(1). in the Memorandum Of Understanding (MOU) signed February 2, 1993.

Following are the basic principles to be used in determining which opportunities count towards the obligation as described above.

When the APWU Regional Coordinator is provided an opportunity to fill a full-time career position, that opportunity will count toward the employer's obligation under Section 1.B.(1). of the MOU.

When the APWU Regional Coordinator is provided an opportunity to fill a part-time flexible career position, that opportunity will count toward the employer's obligation under Section 1.B.(1). of the MOU when the PTF is subsequently converted to full-time.

Conversions of PTFs Within Own Installation
(Less than 100 Career Clerk Craft Employee Installations)

All PTFs on the rolls on February 2, 1993, in less than 100 career clerk craft employee installations, converted to full-time regular status within their own installation will count.

Full-Time Regular Positions

All full-time regular opportunities provided to the APWU Regional Coordinator in accordance with the MOU will count.

Part-Time Flexible Positions

If the APWU Regional Coordinator is provided with a PTF position to be filled and supplies a PTF/PTR/FTR employee who is accepted for the transfer, any subsequent conversion of the PTF to full-time regular will count.

If the APWU Regional Coordinator is provided with a PTF position to be filled and is unable to provide a PTF/PTR/FTR transfer, the Postal Service may proceed to fill the need through hiring. A subsequent conversion of the PTF

to full-time regular will count.

If the APWU Regional Coordinator is NOT provided with a PTF position to be filled and the Postal Service fills the need through hiring, a subsequent conversion of the PTF to full-time regular does NOT count, unless the FTR opportunity was provided to the APWU Regional Coordinator and the Coordinator provided the PTF in question.

If the employer hires a PTR who is subsequently converted to PTF and eventually converted to full-time regular, it will NOT count unless the PTF opportunity was provided to the APWU Regional Coordinator and the Coordinator provided the PTR in question.

These provisions will be in effect only for the duration of the MOU signed February 2, 1993 or until the employer's obligations to offer opportunities is complete.

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
Date: 4-6-93

William J. Downes
Manager
Contract Administration
APWU/NPMHU
Date: 4-6-93

MEMORANDUM OF INTENT
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
AMERICAN POSTAL WORKERS UNION, AFL-CIO

RE: PTF OPPORTUNITIES FOR CONVERSION TO OTHER THAN OWN INSTALLATION -- CLARIFICATION TO SECTION 1.B.(4).c. OF MOU SIGNED FEBRUARY 2, 1993

This memo of intent clarifies Section 1.B.(4).c of the MOU signed between the parties on February 2, 1993 concerning the conversion of PTFs and hiring/utilization of TEs in the crafts represented by the APWU.

Section 1.B.(4).c. reads as follows:

> "c. A part-time flexible employee converted to full-time pursuant to this section who fails to qualify in the full-time assignment, may be returned to his/her former installation as a part-time flexible employee. An employee converted to full-time and returned to his/her former installation under this section will count as a conversion for purposes of this agreement."

As further clarification of the intent of the parties in this provision, the following will apply:

Before conversion to full-time, the employee must meet the skill requirements of the position selected for. Therefore, the following process will be used when transferring PTFs for the purposes of conversion under the MOU.

1. Upon identification by the APWU Regional Coordinator of the PTF for placement, the PTF may be detailed to the gaining office.

2. The PTF will be given appropriate training.

3. If the PTF passes training, conversion is made. For purposes of seniority, the date of detail assignment is the seniority date.

4. If the PTF fails training, the employee may be returned to former installation as a PTF with no loss in seniority or be converted to full-time in the gaining installation, at the option of the employer. (If the employer excercises the option to retain the PTF and convert him/her in the gaining installation, his/her seniority date will be the date of the conversion)

5. The Area office will compile a list of all opportunities given to the APWU Regional Coordinator in accordance with this section and the MOU. The Area office will simultaneously forward a copy of the list to William J. Downes, Manager, Contract Administration APWU/NPMHU.

William Burrus
William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

Date: 3-23-93

William J. Downes
William J. Downes
Manager
Contract Administration APWU/NPMHU
Labor Relations
U.S. Postal Service

Date: 3-23-93

Questions and Answers on the Memorandum of Understanding
Signed February 2, 1993

RE: PTF Conversions/TE Hiring and Use

Prepared Jointly
by
The American Postal Workers Union, AFL-CIO, and
The United States Postal Service

The following questions and answers are provided to clarify the MOU signed between the parties regarding PTF conversions and TE hiring and utilization:

1. Section 1.A.(1).
Can the conversions be completed over a period of time, such as one per pay period?

The conversions can be completed over a period of time as long as the national deadlines and minimums for each year are adhered to. However, if full time assignments are available, we would urge earlier conversions in order to maximize the number of opportunities for all the applicable PTFs.

2. Section 1.A.
Our office, as of the signing of this MOU, has 98 clerk craft employees on the rolls. During the life of this MOU we hire five additional employees which raises our clerk craft complement to 103. Must we convert the PTFs that were on the rolls as of the signing of this agreement, since we now exceed the 100 clerk craft employee criteria?

No. For purposes of large and small installations as defined in the Memo, it is the number of career clerk craft employees as of February 2, 1993, the date the agreement was signed. From that date no installation can be changed to a different category for purposes of this agreement.
NOTE: If PTFs are hired, they will be converted IN THAT INSTALLATION before PTFs with more seniority from another installation are allowed to convert to that installation, in accordance with the national agreement.

3. Section 1.A. & B.
Can management convert PTFs to full-time without identifying a residual vacancy?

A. Yes, however the employee will be considered "unencumbered" and may be subsequently assigned to a residual vacancy.

4. Section 1.A. & B.
Are the conversions to full-time "regular" positions or can they be made to full-time "flexible".

A. The agreement provides for conversion to full-time "regular".

5. Section 1.B.4.b
What do you mean by the term unencumbered?

Unencumbered refers to a full-time employee not holding a bid assignment, which includes unassigned regular.

6. Section 1.A.(2).
How does section 1.A.(2) relate to those employees that were excessed to another craft within their installation, since they technically do not have retreat rights but must be returned to their craft at the first opportunity?

All excessed employees would be returned in accordance with Article 12 prior to converting existing PTF clerks in the installation.

7. Section 1.A.(2). & (3).
Can a local office that has employees with retreat rights elect to convert PTFs to full-time and retain them in the office, if all retreat right employees have been afforded their right to return?

A. Yes.

8. Section 1.B.(1)
What will be the criteria used to determine if there are available Full Time vacancies in an office?

The determination as to available full time vacancies is made locally. Some of the determining factors include the present and future needs of the office, the impact of the recent early retirements and a review of any grievances filed on maximization.

9. Section 1.B.(4).
In the Clerk craft, if the parties agree that previously "withheld" positions should be filled, what is the proper procedure?

A. "Withheld" positions are residual vacancies and should be filled through the assignment of unencumbered employees, transfers or the conversion and assignment of a PTF, in accordance with existing procedures.

10. Section 1.B.(3).
If full-time employees transfer under the liberalized rules will the employee retain full-time status.

A. The National Agreement provides that employees transferring from one installation to another become PTFs in the gaining installation, however, if there are no PTFs in the gaining installation such employees may be retained as full-time.

11. Section 1.A. & B.
If the opportunity for conversion is to a residual vacancy in a level different from that of the senior PTF, must the employee assume the level of the vacancy?

A. Yes.
NOTE: In terms of who gets opportunities in the different levels; if the conversion is within the installation, the conversions will be made in accordance with the terms of the national agreement; if the conversions are to another installation, the Regional union representative will make the determination.

12. Sections 1.A & B.
What is the seniority date of the employee who elects to go to another office to be converted?

He/she begins a new period of seniority in accordance with appropriate craft articles.

13. Sections 1.A. & B.
If the employee is required to be converted to another office due to no opportunities in his/her own office, does he/she have to accept the conversion to full time?

No.

14. Section 1.B.(3)
Are we required to accept transfers, if requested, without the normal review of the employee's record, eg. safety, attendance, etc.?

As stipulated in the agreement, the transfer rules will be liberalized for purposes of this MOU. The reason for relaxing the transfer rules is to open opportunities to fulfill the obligation of the MOU.

15. Section 1.B.(4).a.
"PTFs will be converted to full-time in their current installation if full-time clerk craft duty assignments or other conversion opportunities are available". What does this mean? Can we convert outside the craft?

Other conversion opportunities means to positions created by a review of needs of the office, a review of maximization grievances, a need for additional duty assignments. No, it does not mean we can convert outside the craft.

16. Section 1.B.(4).b.
When are the lists of opportunities referenced in Section 1.B.(4).b. due to the appropriate APWU regional representative?

The lists are due to the APWU regional representative with enough lead time to allow them the 30 days to find the PTFs eligible and qualified to fill the conversion opportunity. Qualified is defined in the MOU on Page 308 of the collective bargaining agreement.
NOTE: Motor Vehicle and Special Delivery craft lists of opportunities will be provided to Labor Relations, Manager, Contract Administration APWU/NPMHU, 475 L'Enfant Plaza, Washington, DC, 20260-4127.

17. Section 1.B.(4).b.
Who will the APWU Regional representative provide the names of the eligible and qualified PTFs to?

The names will be provided to the Area Manager, Human Resources.
NOTE: Motor Vehicle and Special Delivery craft lists of eligible and qualified names will be provided to Labor Relations, Headquarters, who will then provide them to the appropriate Area Manager, Human Resources.

18. Section 1.B.(4).
How do employees become aware of the conversion opportunities and how do they notify their appropriate APWU regional coordinator?

The APWU Regional Coordinator will establish a procedure for the PTFs in his/her region.

19. Section 1.B.(4).
Can a PTF employee go directly to an installation head of another office to be afforded the opportunity for conversion?

No. All PTFs converted to full time outside their own installation will be coordinated through the APWU Regional representative.

20. Section 3.
If an assignment is created pursuant to Article 7.2.A. combining clerk and Special Delivery Messenger work, what craft will the converted SDM employee be assigned?

A. Special Delivery Messenger.

21. Section 4.
Can an assignment identified as "held pending reversion" be changed in regard to off days or hours?

A. No, but it can be reverted.

22. Section 4
What happens if the employer decides to decrease the number of assignments that had been identified to the union as "impacted"?

A. A new "impact statement" must be provided to the union pursuant to the parties' agreement identifying the changed conditions. Any subsequent postings of the former impacted positions must be posted installation wide pursuant to the craft articles.

23. Section 5
Will TEs be limited to work on "withheld", "held pending reversion" or "PTF attrition" assignments?

A. No. They may be worked on other assignments however they may not replace a employee on a bidded or opted assignment or be used in lieu of PTFs pursuant to Section 8.C.2. of this MOU.

24. Section 5
Is the "opting" process impacted by the new TE hiring authority?

A. No. Career Employees may still opt in accordance with the original TE agreement dated December 3, 1991.

25. Section 5.E.
"When there is a change in needs, the appropriate union representative will be notified in advance". Who has this responsibility and what appropriate union official will be notified?

Operations will be responsible for determining any change in needs. The information will be provided to Labor Relations. Labor Relations will have the responsibility to notify the APWU official. At the national level, the Manager, Contract Administration, APWU/NPMHU, will notify the President of the APWU and at the Area level the Area Managers will determine the change in needs for their area and designate responsibility for notifying the appropriate APWU Regional Coordinator.

26. Section 8.
Can unencumbered employees opt for vacant work weeks?

A. Yes, if the full time employee who is potentially impacted is performing identical duties, and possess the identical skills of the vacant duty assignment.

27. Section 9

Does the No Layoff provision apply only to each employee in the APWU union employed in the regular work force?

No. The no layoff applies to all bargaining unit employees in the regular work force represented by the APWU covered by the 1990 National Agreement.

28. Section 12

If the need to hire exists can we convert to career an existing TE employee without going to the hiring register?

This issue will be explored by the parties in accordance with Section 12 of the MOU.

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

William Downes 2/12/93
William Downes
Manager
Contract Administration
U.S. Postal Service

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: H7C-4M-C 30518
CLASS ACTION
CLARE, MI 48617

Dear Mr. Burrus:

Recently, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this case is whether or not the February 2, 1993, PTF/TE memo withdraws grievances alleging violations other than the conversion of PTFs or the hiring of TEs.

The PTF\TE memo is a full and final settlement of all grievances to date with regard to the hiring of transitional employees and the conversion of part-time flexible employees to full-time.

During our discussion, we agreed that questions in this case concerning whether a position was properly reverted are not nationally interpretive and are, therefore, suitable for resolution by the parties at Step 3 or regional arbitration, if necessary. If a position has been improperly reverted, the parties or a regional arbitrator may decide the issue based on appropriate Article(s) of the National Agreement.

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

Time limits at Step 4 were extended by mutual request.

Sincerely,

Anthony J. Vegliante
Manager
Grievance and Arbitration
Labor Relations

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

Date: 4-6-93

American Postal Workers Union, AFL-CIO

[illegible] Twelfth Street, N.W., Washington, D.C. 20005 • (202) 842-4250

[illegible]
President

February 15, 1984

James C. Gildea
Assistant Postmaster General
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

Dear Mr. Gildea:

This is in further response to the issue of my letter dated January 10, 1984 in which I raised an interpretive question. Your undated response does not address the interpretive issue of whether the Postal Service interprets provisions of the 1981 National Agreement as permitting the use of Rural Carriers in the performance of work normally assigned to crafts represented by our union.

The fact circumstances involved in the Conifer, Colorado office are not despositive of the primary question.

Please respond as to the employer's interpretation. William Burrus of my staff may be contacted for further discussion.

Sincerely,

Moe Biller,
President

MB:WB:mc

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. Moe Biller
President
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Biller:

This is in further response to your letter of January 10 concerning cross-craft assignments at the Conifer, Colorado, Post Office.

For your information, there are eleven bargaining-unit employees assigned to that office, three part-time flexible clerks, four regular rural carriers and four rural carrier relief employees.

The Labor Relations Department investigated the union's assertion that cross-craft assignments are occurring at the Conifer Post Office and found that this was not the situation there. Rural carriers are not performing work that is normally performed by clerk craft employees. We did find that during the peak mailing period of Christmas 1983, local management permitted rural carriers to withdraw mail for their routes from distribution cases. We consider the length of time required to withdraw that mail as being insignificant. Furthermore, that situation has not recurred.

Should you require additional information, please let me know and specify the office(s) by name.

Sincerely,

James C. Gildea
Assistant Postmaster General
Labor Relations Department

American Postal Workers Union, AFL-CIO
817 Fourteenth Street, N.W. Washington, D.C. 20005 • (202) 842-4250

MOE BILLER
President

January 10, 1984

James Gildea
Assistant Postmaster General
Labor Relations Department
United States Postal Service
Washington, D.C. 20260

Dear Mr. Gildea:

During the 1981 national negotiations USPS and APWU/NALC in joint bargaining reached agreement on a Memorandum of Understanding providing for cross craft assignments consistent with Articles 7, 12 and 13. This Memorandum specifically continued the practice existing among the six crafts under the 1978 National Agreement.

The Rural Letter Carriers are not included in the referenced six crafts and are not covered under the provisions of Article 7 governing cross-craft assignments. Information received from Conifer, Co. and other small post offices where hours for clerical PTF's are limited indicates that such hours are being supplemented by Rural Letter Carriers.

The union interprets the above cited provisions as excluding Rural Letter Carriers and thereby they are prohibited from performing work normally assigned to crafts represented by our union.

Please respond as to the employers interpretation. William Burrus of my staff may be contacted for further discussions.

Sincerely,

Moe Biller
President

MB:WB:mc

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

October 19, 1989

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Dear Mr. Burrus:

This is in further response to your August 25 letter concerning the subject of secondary casual appointments.

The "ORPES" report is being revised to include the rural carrier relief and/or postmaster replacements. In the future, these reports will be forwarded to the American Postal Workers Union (AFL-CIO) on an accounting period basis.

If there are any further questions, please contact Peter Sgro of my staff at 268-3824.

Sincerely,

Anthony J. Vegliante
General Manager
Programs and Policies Division

American Postal Workers Union, AFL-CIO
1300 L Street, NW, Washington, DC 20005

August 25, 1989

William Burrus
Executive Vice President
(202) 842-4246

Dear Mr. Vegliante:

This is a continuation of our discussions on the subject of secondary casual appointments.

Pursuant to your commitment that "an employee hired as a rural carrier relief (and postmaster relief) who receives a secondary appointment as a clerk casual.....would be counted in the 5 percent allotment," I shall need verification of the number of casuals on-the-rolls within the APWU/NALC bargaining units.

It is my understanding that the numbers reported on the "ORPS" report do not include the rural carrier relief or postmaster replacements. Furthermore, I am advised that the "Multiple Segments Employee Master Report" does contain the needed information. We therefore request this report be provided to the Union on an accounting basis and that we receive a summary or copy of the reports for the past year.

Sincerely,

William Burrus
Executive Vice President

Anthony Vegliante
Programs and Policies
U.S. Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260-41000

WB:rb

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

August 16, 1989

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005

Dear Bill:

This is in reference to your letter dated July 13 regarding dual appointments.

Employees who have secondary appointments as casual employees are tracked according to their Designation Activity Code (Des/Act) from the date they receive secondary appointments as casuals. For example, an employee hired as a rural carrier relief who receives a secondary appointment as a clerk casual (Des/Act 61-0) would be counted in the 5 percent allotment. Employees in this category are counted as casuals even when they are not working in the craft which corresponds with their Des/Act.

I trust this clarifies any misunderstanding on this issue. If you have any other questions, please contact Raymond J. Sorgi of my staff at 268-3823.

Sincerely,

Vincent R. Sombrotto for
Joseph J. Mahon, Jr.
Assistant Postmaster General

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: Transitional Employees

The parties agree that only the following articles and portions of articles of the National Agreement as they appear in bold face print below apply to transitional employees:

Article 1

Article 2

Article 3

Article 5

Article 7

ARTICLE 7
EMPLOYEE CLASSIFICATION

Section 1. Definition and Use

* * * * *

C. Transitional Work Force--APWU

1. The transitional work force shall be comprised of noncareer, bargaining unit employees utilized to fill vacated assignments as follows:

   a. Transitional employees may be used to cover duty assignments which are due to be eliminated by automation and residual vacancies withheld pursuant to Article 12.

   b. Transitional employees may be used to replace part-time attrition. Over the course of a pay period, the Employer will make a reasonable effort to ensure that qualified and available part-time flexible employees are utilized at the straight-time rate prior to assigning such work to transitional employees working in the same work location and on the same tour.

2. Transitional employees shall be hired pursuant to such procedures as the Employer may establish. They will be hired for a term not to exceed 359 calendar days for each appointment. Such employees have no daily or weekly work hour guarantees. Transitional employees will have a break in service of at least 6 days between appointments.

3. The use of transitional employees will be phased out as the deployed automated equipment becomes operationally proficient.

Article 8

ARTICLE 8
HOURS OF WORK

Section 3. Exceptions

The above shall not apply to part-time employees and transitional 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.

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

Section 4.G. Overtime Work

Transitional employees shall be paid overtime for work performed in excess of forty (40) work hours in any one service week. Overtime pay for transitional employees 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 transitional employee in excess of eight (8) work hours in a service day, 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. employees shall be paid additional compensation at the rate of ten percent (10%) of the base hourly straight-time rate.

For time worked between the hours 6:00 p.m. and 6:00 a.m. transitional employees shall be paid additional compensation at the rate of ten percent (10%) of the basic hourly straight-time rate.

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.

The preceding paragraph shall apply to transitional employees.

Article 9

ARTICLE 9
SALARIES AND WAGES

Section 10. Transitional Employee

During the term of the 1990 Agreement, transitional employees' hourly rate will be as provided in this section.

A. Transitional employees will be paid at Step A or Step AA, as appropriate, of the part-time flexible basic hourly rate of the position to which they are assigned.

BJ
MM

Article 10

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 transitional employees, 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.

Article 11

ARTICLE 11
HOLIDAYS

Section 6. Holiday Schedule

D. Transitional employees will be scheduled for work on a holiday or designated holiday after all full-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 nonvolunteers being scheduled to work a nonscheduled day or any full-time nonvolunteers 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 17 - Sections 2, 6, and 7

Article 18

Article 19

ARTICLE 19
HANDBOOKS AND MANUALS

New paragraph 3: 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 transitional employees only to the extent consistent with other rights and characteristics of transitional employees negotiated in this Agreement and otherwise as they apply to the supplemental work force. The Employer shall have the right to make changes to handbooks, manuals and published regulations as they relate to transitional employees 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 36

Article 42

Article 43

Only the following Memorandums of Understanding from the 1990 National Agreement shall apply to Transitional Employees:

Use of Privately Owned Vehicles
Leave Sharing
Leave Without Pay

Sherry A. Cagnoli
Assistant Postmaster General
Labor Relations Department
U.S. Postal Service

Moe Biller
President
American Postal Workers
Union, AFL-CIO

Date: 12/3/91

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

In the interest of enhancing career employment opportunities for APWU transitional employees, the Postal Service and the APWU agree as follows:

1. APWU transitional employees (TEs) (as set forth in the TE agreements of 12/31/91 and 2/2/93), who have completed 180 days of employment as a TE and are still on the TE rolls, may take two entrance examinations for career positions in APWU-represented crafts. Only two such examination opportunities will be provided each eligible TE pursuant to this memorandum, except that eligible TEs will be permitted to retake any exams which are subsequently discontinued and replaced.

2. Eligible TEs who wish to take entrance examinations for career positions in APWU-represented crafts must submit their requests in writing to the appropriate personnel office. The local union will be provided written notification of TEs who have submitted such requests. The requested examinations will be administered to eligible TEs consistent with normal scheduling of the exams.

3. Each TE's exam results will be scored, including any applicable veterans' preference points, and passing scores will be merged with the existing register for that exam. Eligible TEs who already have a passing test score on the same register will have the option of merging the new test score with the existing register in lieu of their old test score. Thereafter, normal competitive selection procedures will apply in making appointments to career positions.

4. This agreement will be effective through November 20, 1994. Nothing herein is intended to limit any veterans' preference in hiring as established by law.

Joseph J. Mahon, Jr.
Vice President
Labor Relations
U.S. Postal Service

Date September 24, 1993

Moe Biller
President
American Postal Workers
Union, AFL-CIO

Date September 24, 1993

LABOR RELATIONS

UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4000

September 24, 1993

Mr. Moe Biller
President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Moe:

This letter is to follow up a meeting with Mr. James McCarthy and Mr. Tommy Thompson, Assistant Directors of the Clerk Craft and Peter Sgro of my staff on September 16. The issues discussed at the meeting were if APWU Clerk TEs are trained and qualify on the skills of a duty assignment, do these skills carry over when they are hired as career employees, and are they currently considered qualified?

The position of the Postal Service is that APWU Clerk TEs who are properly trained on a duty assignment and qualify in their TE appointments will be considered qualified on the duty assignments as career employees. Properly trained will mean the employee received the same training career employees receive and he/she qualified under the same standards imposed on career employees.

Although the meeting was held with APWU Clerk officials, this position would apply to all APWU craft TEs. If you disagree with the above stated position, please contact this office with your objections and/or grounds of disagreement.

If there are any questions, please contact Mr. Sgro at (202) 268-3824.

Sincerely,

Anthony J. Vegliante
Manager
Grievance and Arbitration

cc: Mr. Green
Mr. Jacobson

Implementation Procedures for Enhanced Career Opportunities for APWU TEs

1. Notify APWU TEs

Post a notice in post offices, stations, branches and processing and distribution centers where current APWU Transitional Employees (TEs) are employed explaining that:

APWU TEs may take an entrance examination for any register used to fill career positions for APWU crafts if they have completed 180 days of employment as a TE and are still on the rolls as a TE. Two opportunities will be provided to each eligible TE. Former TEs who are no longer employed by the Postal Service are not eligible to request to take the examination under the USPS-APWU Memorandum of Understanding (copy attached). TEs who are being reappointed and are merely serving their six-day break in service can be scheduled for the examination.

APWU TEs may submit their request to take the examination at any time after they have met the 180-day requirement. Requests should be submitted to the personnel office, or if there is no personnel office on site, to the TE's postmaster or immediate manager.

Upon receiving the request, the personnel office will provide the TE with a Form 2479-A/B, *Application Card/Admission Card* to be completed, with instructions on where to return the completed card. The TE must apply to take the entrance examination for a register that services the installation where he or she is currently employed. Applications may be accepted in person or by mail.

Future APWU TEs should be advised at the appointment stage of the employment process that they will become eligible to request the examination after completion of the 180-day requirement. They should be advised that it will be their responsibility to submit a request for the examination once the service requirement is met.

2. Verify Entitlement

The personnel office verifies that employees meet the 180-day requirement and stamps Form 2479-B "Delayed - APWU TE." TEs who have not yet met their 180-day requirement in their current appointment, but did meet their 180-day requirement in a previous APWU TE appointment, are eligible. Each APWU TE gets an opportunity to take two entrance examinations pursuant to the Memorandum of Understanding. An eligible TE could take two different entrance examinations or the same entrance examination twice.

Eligible TEs will also be permitted to retake any examination which is subsequently discontinued and replaced. Taking an entrance examination as a part of an announcement to the general public does not count against the two opportunities pursuant to the Memorandum of Understanding.

3. Schedule Examination

Major examinations should be given to eligible TEs who have submitted requests on a quarterly basis. However, in no event should TEs be scheduled for examinations later than six months from when the request was made.

To the extent feasible, testing should be scheduled to coincide with other testing needs, e.g., veteran testing, inservice or qualification testing for special programs.

4. Administer Examination

For examinations that are also used for non-APWU crafts, during the completion of the biographical grids, examiner and monitors should be especially watchful of applicants who have their 2479s stamped "Delayed - APWU TE." Completion of the job choice grid must be monitored so that APWU TEs grid only APWU crafts and no other choice. As described in the Applicant Instructions, APWU TEs will grid circle labeled "3" for "Delayed" in the Special Instructions grid. They will also grid "Entrance" for the Exam Type grid. If the examination is for an Area Eligibility Register, the applicant may choose up to three offices. Examiner and monitors should not attempt to edit office choices.

5. Merge Results

Ratings are merged with existing eligibilities on the Hiring and Testing data base or on manual registers. If a rating inadvertently gets loaded to a register not used for APWU crafts, the rating should be deleted or inactivated from that register. If an APWU TE already has an active rating on the register, then the TE has the option of replacing the existing rating with the new one. However, the TE must be informed that if he or she elects to keep their existing rating, then the eligibility period of the existing rating will stand as it is and cannot be changed.

Questions and Answers on the Memorandum of Understanding
Signed February 2, 1993

RE: PTF Conversions/TE Hiring and Use

Prepared Jointly
by
The American Postal Workers Union, AFL-CIO, and
The United States Postal Service

The following questions and answers are provided to clarify the MOU signed between the parties regarding PTF conversions and TE hiring and utilization:

1. Section 1.A.(1).
Can the conversions be completed over a period of time, such as one per pay period?

The conversions can be completed over a period of time as long as the national deadlines and minimums for each year are adhered to. However, if full time assignments are available, we would urge earlier conversions in order to maximize the number of opportunities for all the applicable PTFs.

2. Section 1.A.
Our office, as of the signing of this MOU, has 98 clerk craft employees on the rolls. During the life of this MOU we hire five additional employees which raises our clerk craft complement to 103. Must we convert the PTFs that were on the rolls as of the signing of this agreement, since we now exceed the 100 clerk craft employee criteria?

No. For purposes of large and small installations as defined in the Memo, it is the number of career clerk craft employees as of February 2, 1993, the date the agreement was signed. From that date no installation can be changed to a different category for purposes of this agreement.
NOTE: If PTFs are hired, they will be converted IN THAT INSTALLATION before PTFs with more seniority from another installation are allowed to convert to that installation, in accordance with the national agreement.

3. Section 1.A. & B.
Can management convert PTFs to full-time without identifying a residual vacancy?

A. Yes, however the employee will be considered "unencumbered" and may be subsequently assigned to a residual vacancy.

4. Section 1.A. & B.
Are the conversions to full-time "regular" positions or can they be made to full-time "flexible".

A. The agreement provides for conversion to full-time "regular".

5. Section 1.B.4.b
What do you mean by the term unencumbered?

Unencumbered refers to a full-time employee not holding a bid assignment, which includes unassigned regular.

6. Section 1.A.(2).
How does section 1.A.(2) relate to those employees that were excessed to another craft within their installation, since they technically do not have retreat rights but must be returned to their craft at the first opportunity?

All excessed employees would be returned in accordance with Article 12 prior to converting existing PTF clerks in the installation.

7. Section 1.A.(2). & (3).
Can a local office that has employees with retreat rights elect to convert PTFs to full-time and retain them in the office, if all retreat right employees have been afforded their right to return?

A. Yes.

8. Section 1.B.(1)
What will be the criteria used to determine if there are available Full Time vacancies in an office?

The determination as to available full time vacancies is made locally. Some of the determining factors include the present and future needs of the office, the impact of the recent early retirements and a review of any grievances filed on maximization.

9. Section 1.B.(4).
In the Clerk craft, if the parties agree that previously "withheld" positions should be filled, what is the proper procedure?

A. "Withheld" positions are residual vacancies and should be filled through the assignment of unencumbered employees, transfers or the conversion and assignment of a PTF, in accordance with existing procedures.

10. Section 1.B.(3).
If full-time employees transfer under the liberalized rules will the employee retain full-time status.

A. The National Agreement provides that employees transferring from one installation to another become PTFs in the gaining installation, however, if there are no PTFs in the gaining installation such employees may be retained as full-time.

11. Section 1.A. & B.
If the opportunity for conversion is to a residual vacancy in a level different from that of the senior PTF, must the employee assume the level of the vacancy?

A. Yes.
NOTE: In terms of who gets opportunities in the different levels; if the conversion is within the installation, the conversions will be made in accordance with the terms of the national agreement; if the conversions are to another installation, the Regional union representative will make the determination.

12. Sections 1.A & B.
What is the seniority date of the employee who elects to go to another office to be converted?

He/she begins a new period of seniority in accordance with appropriate craft articles.

13. Sections 1.A. & B.
If the employee is required to be converted to another office due to no opportunities in his/her own office, does he/she have to accept the conversion to full time?

No.

14. Section 1.B.(3)
Are we required to accept transfers, if requested, without the normal review of the employee's record, eg. safety, attendance, etc.?

As stipulated in the agreement, the transfer rules will be liberalized for purposes of this MOU. The reason for relaxing the transfer rules is to open opportunities to fulfill the obligation of the MOU.

15. Section 1.B.(4).a.
"PTFs will be converted to full-time in their current installation if full-time clerk craft duty assignments or other conversion opportunities are available". What does this mean? Can we convert outside the craft?

Other conversion opportunities means to positions created by a review of needs of the office, a review of maximization grievances, a need for additional duty assignments. No, it does not mean we can convert outside the craft.

16. Section 1.B.(4).b.
When are the lists of opportunities referenced in Section 1.B.(4).b. due to the appropriate APWU regional representative?

The lists are due to the APWU regional representative with enough lead time to allow them the 30 days to find the PTFs eligible and qualified to fill the conversion opportunity. Qualified is defined in the MOU on Page 308 of the collective bargaining agreement.
NOTE: Motor Vehicle and Special Delivery craft lists of opportunities will be provided to Labor Relations, Manager, Contract Administration APWU/NPMHU, 475 L'Enfant Plaza, Washington, DC, 20260-4127.

17. Section 1.B.(4).b.
Who will the APWU Regional representative provide the names of the eligible and qualified PTFs to?

The names will be provided to the Area Manager, Human Resources.
NOTE: Motor Vehicle and Special Delivery craft lists of eligible and qualified names will be provided to Labor Relations, Headquarters, who will then provide them to the appropriate Area Manager, Human Resources.

18. Section 1.B.(4).
How do employees become aware of the conversion opportunities and how do they notify their appropriate APWU regional coordinator?

The APWU Regional Coordinator will establish a procedure for the PTFs in his/her region.

19. Section 1.B.(4).
Can a PTF employee go directly to an installation head of another office to be afforded the opportunity for conversion?

No. All PTFs converted to full time outside their own installation will be coordinated through the APWU Regional representative.

20. Section 3.
If an assignment is created pursuant to Article 7.2.A. combining clerk and Special Delivery Messenger work, what craft will the converted SDM employee be assigned?

A. Special Delivery Messenger.

21. Section 4.
Can an assignment identified as "held pending reversion" be changed in regard to off days or hours?

A. No, but it can be reverted.

22. Section 4
What happens if the employer decides to decrease the number of assignments that had been identified to the union as "impacted"?

A. A new "impact statement" must be provided to the union pursuant to the parties' agreement identifying the changed conditions. Any subsequent postings of the former impacted positions must be posted installation wide pursuant to the craft articles.

23. Section 5
Will TEs be limited to work on "withheld", "held pending reversion" or "PTF attrition" assignments?

A. No. They may be worked on other assignments however they may not replace a employee on a bidded or opted assignment or be used in lieu of PTFs pursuant to Section 8.C.2. of this MOU.

24. Section 5
Is the "opting" process impacted by the new TE hiring authority?

A. No. Career Employees may still opt in accordance with the original TE agreement dated December 3, 1991.

25. Section 5.E.
"When there is a change in needs, the appropriate union representative will be notified in advance". Who has this responsibility and what appropriate union official will be notified?

Operations will be responsible for determining any change in needs. The information will be provided to Labor Relations. Labor Relations will have the responsibility to notify the APWU official. At the national level, the Manager, Contract Administration, APWU/NPMHU, will notify the President of the APWU and at the Area level the Area Managers will determine the change in needs for their area and designate responsibility for notifying the appropriate APWU Regional Coordinator.

26. Section 8.
Can unencumbered employees opt for vacant work weeks?

A. Yes, if the full time employee who is potentially impacted is performing identical duties, and possess the identical skills of the vacant duty assignment.

27. Section 9

Does the No Layoff provision apply only to each employee in the APWU union employed in the regular work force?

No. The no layoff applies to all bargaining unit employees in the regular work force represented by the APWU covered by the 1990 National Agreement.

28. Section 12

If the need to hire exists can we convert to career an existing TE employee without going to the hiring register?

This issue will be explored by the parties in accordance with Section 12 of the MOU.

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

William Downes 2/12/93
William Downes
Manager
Contract Administration
U.S. Postal Service

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

UNITED STATES POSTAL SERVICE AND

AMERICAN POSTAL WORKERS UNION, AFL-CIO

RE: PART TIME FLEXIBLE CONVERSIONS/TRANSITIONAL EMPLOYEES

1. CONVERSION OF CLERK CRAFT PART-TIME FLEXIBLES (PTF)

A. Installations with 100 or more career clerk craft employees.

(1). All part-time flexible clerk craft employees on the rolls on the date of this agreement will be converted to full-time regular in the clerk craft in their own installation by June 30, 1993.

(2). Full-time regular employees with retreat rights may exercise those rights up to the number of part-time flexible employees slated for conversion. The Postal Service shall either provide part-time employees slated for conversion (up to the number of full-time employees exercising their retreat rights) opportunities for conversion to other installations or convert such employees in their own installation at the option of the employer. However, such newly converted employees may not remain in their installation unless all eligible employees with retreat rights have been provided with the opportunity to exercise their retreat rights to return to their craft and/or installation.

(3). Conversions made pursuant to 1.A.(2). above will not count as conversions for offices of less than 100 career clerk craft employees even if such employees accept opportunities in the less than 100 career clerk craft employee installations.

B. Installations with less than 100 career clerk craft employees

(1). PTFs on the rolls on the date of this agreement in installations with less than 100 career clerk craft employees will be given an opportunity to convert to full-time regular in the clerk craft in their own or another installation. It is the intent of the parties that any such requirement to change offices will not be utilized by management as a device to discourage conversions of PTFs and that inconvenience and disruption to PTFs will be minimized. The timetable for administering opportunities for these conversions is as follows:

By June 30, 1993 - 2,000 Minimum
July 1, 1993 to June 30, 1994 - 4,000 Minimum
July 1, 1994 to June 30, 1995 - 4,000 Minimum
July 1, 1995 to June 30, 1996 - 4,000 Minimum
July 1, 1996 to June 30, 1997 - 2,000

(2). If more than the minimum number of conversions required in 1.B.(1). above are made pursuant to this agreement, those in excess for any period will count toward the next time frame requirement and will be cumulative toward the 16,000 maximum obligation of this agreement.

(3). For purposes of this agreement, the Employer will liberalize transfer rules for career clerk craft employees requesting transfer to installations of 100 or more career clerk craft employees. There is no prohibition to the employer hiring part-time flexible employees in installations of 100 or more career clerk craft employees. The parties however, recognize that it is in the interest of both the Employer and the Union to provide career employees in installations of less than 100 career clerk craft employees the opportunity to transfer prior to such hiring.

Such part-time flexible employees who elect to transfer and are subsequently converted to

full-time shall be counted against the conversion obligations of Section 1.B.(1). of this agreement. A full-time employee who elects to transfer may be replaced by a PTF employee in the losing office who will be converted to full-time. Such conversions shall count towards the conversion obligations. If the union is unable to provide a PTF who is willing to transfer to a vacancy, the subsequent conversion of the PTF hired to fill the vacancy shall count towards the conversion obligations.

(4). The following principles will be utilized when providing opportunities for the conversion of clerk craft PTFs in installations of less than 100 career clerk craft employees:

a. PTFs will be converted to full-time in their current installation if full-time clerk craft duty assignments or other conversion opportunities are available.

b. If sufficient full-time clerk craft opportunities are not available to accommodate PTFs in their installation, a list (including skills needed, days off, schedule, location, and whether the position is residual or unencumbered) of all available full time clerk craft opportunities in offices within the commuting area that do not have part-time flexible employees on the rolls, will be provided to the appropriate APWU Regional Coordinator.

If the foregoing process does not result in sufficient opportunities for the conversion of PTFs, the Postal Service will identify clerk craft opportunities outside the commuting area in installations that do not have part-time flexible employees on the rolls, and provide this list to the appropriate APWU Regional Coordinator.

Within 30 days, the APWU Regional Coordinator will provide the names of eligible and qualified PTFs who will accept those opportunities.

c. A part-time flexible employee converted to full-time pursuant to this section who fails to qualify in the full-time assignment, may be returned to his/her former installation as a part-time flexible employee. An employee converted to full-time and returned to his/her former installation under this section will count as a conversion for purposes of this agreement.

d. For purposes of this agreement, the MOU on page 308 of the 1990 National Agreement regarding minimum qualifications applies to part-time flexible employees who are converted to full-time.

2. CONVERSION OF MOTOR VEHICLE CRAFT PART-TIME FLEXIBLES

A. Pursuant to this agreement, 450 PTF Motor Vehicle craft employees will be converted to full-time regular in their own or another installation by November 30, 1993.

B. The principles contained in Section 1.B.(4) of this agreement apply to Motor Vehicle craft conversions except that the list of opportunities both within and outside of the commuting area will be provided to the APWU Motor Vehicle Craft Director at the National level.

3. CONVERSION OF SPECIAL DELIVERY CRAFT PART-TIME FLEXIBLES

A. Pursuant to this agreement, 100 PTF Special Delivery Messenger craft employees will be converted to Full Time regular in their own or another installation by November 30, 1993.

B. The full time assignments will be made in accordance with Article 7.2.A. of the collective bargaining agreement. Further, the parties agree to jointly explore work content of the converted PTF employees as well as that of all other Special Delivery Messengers.

C. The principles contained in Section 1.B.(4). of this agreement apply to Special Delivery Craft

conversions except that the list of opportunities both within and outside of the commuting area will be provided to the APWU Special Delivery Craft Director at the National level.

4. GENERAL PRINCIPLES FOR PTF CONVERSIONS

A. Except as otherwise provided for in this agreement, it is understood and agreed by the parties that PTF conversions made under this agreement to unencumbered assignments will be made to the same or higher level consistent with the established procedures set forth in the craft articles of the collective bargaining agreement.

B. Any PTF accepting a transfer to another office under this agreement will be considered a voluntary transfer and the PTF will not be eligible for relocation benefits.

C. Withheld positions - The parties agree that the provisions of Article 12 Section 5.B.2 of the 1990 National Agreement continue to apply.

5. TRANSITIONAL EMPLOYEES - CLERK AND MAINTENANCE CRAFTS

A. From the date of this Memorandum of Understanding (MOU) until November 30, 1997 the total number of APWU Clerk and Maintenance Craft Transitional Employees working in Postal installations nationwide will be in accordance with the following schedule:

(1) CLERK CRAFT AND MAINTENANCE CRAFT

Date of this agreement thru Nov. 30, 1993	-	20,000
December 1, 1993 thru June 30, 1995	-	22,000
July 1, 1995 thru June 30, 1996	-	16,000
July 1, 1996 thru June 30, 1997	-	10,000
July 1, 1997 thru November 30, 1997	-	5,000
After December 1, 1997 - Zero or Number Allowed by TE Agreement In Force At Time		

(2) Transitional employees working as custodians at any one time will be reduced as follows:

Date of this agreement thru June 30, 1995	-	500
July 1, 1995 thru June 30, 1996	-	300
July 1, 1996 thru June 30, 1997	-	100
After July 1, 1997	-	ZERO

After December 1, 1997 - Zero or number allowed by TE Agreement in force at that time

The parties agree that casual employees may not be employed in lieu of full or part-time custodial employees.

The maintenance craft TEs working as custodians at any one time will be limited to 500 of the amount apportioned in Section 5.A.(1) above. If the present custodial complement of TEs exceeds the 500 limit, the adjustment down to the 500 limit will be made through TE attrition, ie; as custodial TEs terms expire, no additional TEs will be hired into the custodial area until the number goes below the 500 maximum.

B. The number of APWU clerk craft TEs in installations with more than 100 career clerks will not exceed 15% of the career clerk craft work force on the rolls in that installation. If an installation presently exceeds 15%, that installation will reduce its TE complement through attrition, ie; as TE terms expire, no additional TE hiring will occur until the installation gets below the maximum percentage. At the request of the local union representative, any office over the 15% maximum will provide a list of TEs and their Enter On Duty (EOD) date. The total number of TEs will not exceed the number of TEs allowed in this agreement.

C. The number of TEs in each craft will be apportioned to each Area Office by Headquarters and communicated to the APWU at the National Level. Each Area Office will allocate a number from their total number of TEs in each craft to each installation within its' Area and provide this information to the appropriate Regional Union Official.

D. Alleged violations of this agreement relating to the TE complement shall be limited to violation of the nationwide maximum and/or the 15% installation maximum.

E. On a quarterly basis, or more frequently at its discretion, the Postal Service may re-evaluate its need for TEs and redistribute them by Area and/or installation. The total number of TEs in the Postal Service will not increase beyond the allocated number for each time frame as described above.

When there is a change in needs, the appropriate union representatives must be notified in advance. At the National Level, on an Accounting Period (AP) basis, the Postal Service will provide a list by craft of on rolls TEs by finance number. In addition, the local union representative will be provided with all TE hiring activity by craft as it occurs and on an AP basis.

F. Installation is defined as a main post office, airport mail facility, terminal or any similar organizational unit formerly under the direction of one postal official, together with all stations, branches and other subordinate units, as defined prior to the USPS management restructuring of 1992.

6. TRANSITIONAL EMPLOYEES - MOTOR VEHICLE CRAFT

A. The Postal Service may hire up to 450 TEs in the Motor Vehicle Craft. This limit is over and above the limits set forth in Section 5.A.(1) above for the Clerk and Maintenance crafts.

B. Under no circumstances will the number of TEs in the Motor Vehicle craft exceed 450. This number will be reduced in accordance with the following schedule:

Date of this agreement thru June 30, 1995 - 450
July 1, 1995 thru June 30, 1996 - 350
July 1, 1996 thru June 30, 1997 - 150
July 1, 1997 - ZERO
After December 1, 1997 - Zero or number allowed by TE agreement in force at time

7. TRANSITIONAL EMPLOYEES - SPECIAL DELIVERY CRAFT

A. The Postal Service may hire up to 100 TEs in the Special Delivery Craft. This limit is over and above the limits set forth in Section 5.A.(1). above for the clerk and maintenance crafts.

B. Under no circumstances will the number of TEs in the Special Delivery craft exceed 100. This number will be reduced in accordance with the following schedule:

Date of this agreement thru June 30, 1995 - 100
July 1, 1995 thru June 30, 1996 - 75
July 1, 1996 thru June 30, 1997 - 50
July 1, 1997 - ZERO
After December 1, 1997 - Zero or number allowed by TE agreement in force at time

8. GENERAL PRINCIPLES - TRANSITIONAL EMPLOYEES

A. TEs hired in a specific craft will be limited to work within the craft.

B. The parties agree that they will work together to establish an effective method to track the need for withheld vacancies.

C. The existing APWU Transitional Employee agreement dated December 3, 1991, is modified in the following manner:

(1). All parts of the TE agreement remain in force with the exceptions of Section 1.c., d., and e., Section 2, Section 3, Section 4, Attachments B, B1, B2, B3, C, and Article 7, Section 1.C.3, which are hereby suspended for the term of this agreement.

(2). Section 5 will remain in force with the following addition: APWU TEs may be used in other assignments including duty assignments while the opting and/or bidding process is being completed.

In addition, the parties agree that over the course of a pay period, the Employer will make a reasonable effort to ensure that qualified and available part-time flexible employees are utilized at the straight-time rate prior to assigning such work to transitional employees working in the same work location and on the same tour.

9. NO LAYOFF

Each employee in the American Postal Workers Union, AFL-CIO, who is employed in the regular work force as of the date of this agreement, and who has not acquired the protection provided under Article 6 of the collective bargaining agreement shall be protected henceforth against any involuntary layoff or reduction in force (RIF) during the term of the collective bargaining agreement ending November 20, 1994.

10. WITHOUT PREJUDICE

This agreement shall not prohibit either party from proposing changes to either this or the previous TE agreement in future collective bargaining. In addition, this agreement will not be cited by either party in any future interest arbitration proceeding.

11. PTF CONVERSION/TRANSITIONAL EMPLOYEE GRIEVANCES

A. This agreement shall be considered full and final settlement of all grievances filed to date with regard to the hiring of Transitional Employees and the conversion of Part-Time Flexible employees to full-time. Any future grievances on maximizations may not use hours worked prior to this agreement as a basis for the grievance. In addition, any conversions to Full-time made as a result of a future grievance may only count toward management's obligation under Section 1.B.(1) above if such PTFs are converted short of arbitration.

B. At the District level, the parties will review existing grievances on Article 7, Section 3.B and C. to determine if they can help identify additional full time positions for PTF conversions.

C. Additionally, in light of the fact that the parties have agreed to resolve these disputes in accordance with this memorandum of understanding, the APWU agrees to withdraw the unfair labor practice charge (Case #5-CA-23057(P)) which has been filed claiming violations of the TE memoranda of understanding.

12. TE FUTURE CAREER OPPORTUNITIES

A. The parties herein express the desirability of affording future career employment opportunities to TEs. Consistent with that view, the parties agree to jointly explore the feasibility of such career opportunities, consistent with applicable law.

Moe Biller

Mr. Moe Biller
President
American Postal Workers
Union, AFL-CIO

Date 2/2/93

Joseph J. Mahon, Jr.
Vice President
Labor Relations
U.S. Postal Service

Date 2-2-93

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: Transitional Employee

1. The parties agree to the following principles:

   a. The transitional work force will be comprised of noncareer, bargaining unit employees.

   b. Transitional employees will be hired for a term not to exceed 359 calendar days and will have a break in service of at least 6 days between appointments.

   c. Transitional employees will be used to cover duty assignments held pending reversion due to automation and residual vacancies withheld pursuant to Article 12. The term "held pending reversion" is a vacant duty assignment which is due to be reverted. The term "residual vacancies" are those positions that remain vacant after the completion of the voluntary bidding process.

   d. Transitional employees may also be used to replace part-time attrition. The term "attrition" refers to the reduction in the career employee complement for any reason.

   e. The use of transitional employees will be phased out as the deployed automated equipment becomes operationally proficient. Transitional employees covering positions withheld for career employees will be retained until the reassigned employees, who require training, qualify for their new duty assignments. The phase-out period for the accomplishment of the above objectives (individually or in combination) may not exceed 90 days from the date of deployment.

   f. Transitional employees who are covering duty assignments held pending reversion or residual vacancies withheld pursuant to Article 12 will not be displaced from these assignments for the purpose of utilizing a casual employee.

   g. Leave provisions for transitional employees are included in Attachment A.

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2. On a quarterly basis, the local union at the impacted office will be provided with an updated report which will provide the following (see Attachment B; Impacted Office Employee Status Report):

   a. The projected reduction for the transition period separated by category as follows: LDC 11, LDC 12 (letters), LDC 12 (Flats), LDC 13, and other clerical (except LDC 42).

   b. A baseline number for each category and a quarterly update of each category for full-time positions and part-time positions.

   c. A listing of transitional employees by name and the job number these employees are working on for positions withheld (see Attachment B1; Positions Withheld).

   d. A listing of transitional employees by name and the job number these employees are working on for positions held pending reversion (see Attachment B2; Positions Held Pending Reversion).

   e. A listing of transitional employees by name and a listing of part-time employees who were replaced by name for part-time assignments (see Attachment B3; Part-Time Assignments).

   f. Management will supply the local union, at the impacted site, with information regarding the equipment deployment schedule for the transition period. The deployment schedule will include specific information (i.e., types of equipment, date of deployment, deployment site). The equipment deployment schedule will be updated annually.

   g. Management will supply the local union at the impacted site with information regarding the impact. This information will also include the time frames for these impacts. Any changes to this information by management requires a 14-day advance notice to the local union. As equipment is deployed and becomes fully operational, the number of transitional employees specific to that deployment will be removed from those assignments in accordance with 1.e. above.

3. On a quarterly basis, management agrees to provide the following information at the regional level:

   a. Management will supply the union with a projected regional reduction of employees for

the transition period (see Attachment C; REGIONAL COMPLEMENT REDUCTION REPORT).

b. On a quarterly basis, management will supply the union with the projected reduction in each MSC, a listing of impacted offices, the actual attrition in the current quarter by impacted office, and a current listing of positions withheld by impacted office.

c. Management will total the information in Item number 2 and supply a regional summary.

4. Regional Determination--Number of Withheld Vacancies:

a. Within 7 days from the effective date of this agreement, the parties at the regional level will meet to determine the number of vacancies withheld during the previous 90-day period.

b. Solely for the purpose of applying this memorandum, withheld residual vacancies will be identified as those vacancies for which the union has received Article 12 notification at the regional level as being withheld for employees who may be involuntarily reassigned outside the installation. In order to be considered a withheld vacancy, the union, at the local level, had to be advised of the specific vacancy withheld by assignment number. This requirement had to be accomplished either by posted notice, letter to the local union, or verbally. Verbal notification can be considered only if the local union official agrees that such verbal notification occurred.

c. Once the withheld residual vacancies are identified, management may use transitional employees to backfill withheld vacancies consistent with the provisions of this Memorandum of Understanding.

5. Career Employee Option for Vacant Duty Assignment:

a. Prior to assigning a transitional employee to an impacted vacancy (held pending reversion), full-time career employees who are potentially impacted, who are performing identical duties, and who possess the identical skills of the vacant duty assignment, may opt for the vacant assignment.

This option procedure will consist of a written preselection of hours and days off by potentially

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impacted employees. The option procedure will not exceed 7 calendar days, and employees who failed to submit their preselection choices will be bypassed.

b. Employees will have 21 days from the effective date of this memorandum to submit their preselection options. Employees who assume new positions on different tours or employees new to a facility will have the opportunity to submit their preselection options within 7 days of assuming their new position. Employees will also have an opportunity to change or modify their preselection options once every 6 months.

6. Assignment of Part-Time Flexible Employees to a Withheld Vacancy:

a. Prior to assigning transitional employees to withheld/held pending reversion vacant positions, management will assign the senior qualified part-time flexible employee to cover the withheld/held pending reversion vacancy, and may backfill the part-time flexible employee's position with a transitional employee. The assignment of the part-time flexible employee to the withheld/held pending reversion vacancy does not change the workhour guarantees.

b. Part-time flexible employee hours worked in withheld/held pending reversion vacancies will not be considered when determining whether the criteria has been met for conversion to full-time pursuant to any maximization obligations the employer may have, or otherwise entitle the part-time flexible to any rights or benefits greater than other part-time flexible employees.

c. If the senior part-time flexible employee does not possess the required skills for the withheld/held pending reversion vacancy, the part-time flexible will be bypassed. If there are no qualified part-time flexible employees, management may use a transitional employee to backfill the withheld/held pending reversion vacancy.

7. Bidding Provisions--Full-time Distribution Clerk, Machine:

a. A full-time Distribution Clerk, Machine, who is restricted from bidding in accordance with

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Article 37.3.B will be allowed to bid and these restrictions will be waived provided:

(1) The employee is currently working in a position which is identified to be eliminated due to automation;

(2) The employee has completed a 90-day probationary period.

b. If a full-time Distribution Clerk, Machine, is restricted from bidding pursuant to Article 37.3.B, and is the successful bidder on a duty assignment pursuant to Subsections a(1) and (2) above, the duty assignment will be held for the employee until his/her current position is eliminated or management may assign the employee to the duty assignment pursuant to the applicable craft articles of the National Agreement. This duty assignment will be covered in the same manner as a withheld position.

c. An employee who is restricted from bidding pursuant to Article 37.3.B may bid and be deemed the successful bidder only once.

8. Reassignment of Career Employees Outside of a Section, Craft, or Installation:

a. Prior to reassigning career employees outside of a section, craft, or installation, management will offer impacted career employees, on a seniority basis, the opportunity to work any existing transitional assignment. Impacted career employees must be currently qualified to backfill these assignments.

b. There will be no out-of-schedule pay or training provided to qualify the impacted employees for these temporary assignments.

9. Layoff of Career Employees:

a. Prior to laying off career employees, management will offer the impacted employees the opportunity to work any existing transitional assignments within the installation. The impacted employee must be currently qualified to backfill these assignments.

b. There will be no out-of-schedule pay or training provided to qualify the impacted employees for these temporary assignments.

10. Article 15:

a. The parties recognize that transitional employees will have access to the grievance procedure for those provisions which the parties have agreed apply to transitional employees.

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

c. Such employees will not be protected by the "just cause" provisions of Article 16. However, the employer cannot retaliate against transitional employees for filing grievances or invoking applicable contractual rights.

d. In any arbitration case concerning a discharge of a transitional employee, the union will bear the burden of proof in establishing that the employer's chief motivation for such a discharge was for retaliation for protected activity.

Attachments

Sherry A. Cagnoli
Assistant Postmaster General
Labor Relations Department
U.S. Postal Service

Moe Biller
President
American Postal Workers
Union, AFL-CIO

Date: 12/3/91

ATTACHMENT A

TRANSITIONAL EMPLOYEE ANNUAL LEAVE PROVISIONS:

I. GENERAL

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

1. Accrual of Annual Leave. Transitional employees 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	Hours of Annual Leave Earned Per Pay Period
1 hour for each unit of 20 hours in pay status in each pay period	20	1
	40	2
	60	3
	80	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 transitional employee may receive a lump-sum payment for accumulated annual leave subject to the following condition:

a. A transitional employee 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 transitional employees 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 transitional employee 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, transitional employees 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. Transitional Employee Responsibilities. Transitional employees are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences. In addition, transitional employees 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 transitional employee. 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.

IMPACTED OFFICE EMPLOYEE STATUS REPORT

Projected Reduction for Transition Period:

LDC 11	_____
LDC 12/Letters	_____
LDC 12/Flats	_____
LDC 13	
Other Clerical; except LDC 42	_____
Total:	_____

QUARTERLY UPDATE

FULL-TIME:	Baseline	PQ 1	PQ 2	PQ 3	PQ 4
LDC 11	_____	_____	_____	_____	_____
LDC 12/Letters	_____	_____	_____	_____	_____
LDC 12/Flats	_____	_____	_____	_____	_____
LDC 13	_____	_____	_____	_____	_____
Other Clerical; except LDC 42	_____	_____	_____	_____	_____
Total:	_____	_____	_____	_____	_____

PART-TIME:	Baseline	PQ 1	PQ 2	PQ 3	PQ 4
LDC 11	_____	_____	_____	_____	_____
LDC 12/Letters	_____	_____	_____	_____	_____
LDC 12/Flats	_____	_____	_____	_____	_____
LDC 13	_____	_____	_____	_____	_____
Other Clerical; except LDC 42	_____	_____	_____	_____	_____
Total:	_____	_____	_____	_____	_____

POSITIONS WITHHELD - SEE ATTACHMENT B1
POSITIONS HELD PENDING REVERSION - SEE ATTACHMENT B2
PART-TIME ASSIGNMENTS - SEE ATTACHMENT B3

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Positions Withheld

Transitional Employee's Name	Job Number & Assignment Date

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ATTACHMENT B2

Positions Held Pending Reversion

Transitional Employee's Name	Assignment Job Number

Part-time Assignments

Transitional Employee's Name and Assignment Date	Replaced Part-time Employee's Name

ATTACHMENT C

REGIONAL COMPLEMENT REDUCTION REPORT

REGION ____________________ FY __________

PROJECTED REGIONAL REDUCTION __________

Division ______________

MSC:	Projected Reduction:
Divisional Total:	

Impacted Offices:	ATTRITION				POSITIONS WITHHELD			
	PQ1	PQ2	PQ3	PQ4	PQ1	PQ2	PQ3	PQ4
*DIVISIONAL SUBTOTALS:								

* Regional totals calculated on final page of report.

ATTACHMENT C - Continued

REGIONAL COMPLEMENT REDUCTION REPORT

SUMMARY

_____ **REGION / FY** _____

PROJECTED REGIONAL REDUCTION: _____

REGIONAL TOTALS

ATTRITION:

Postal Quarter (PQ) 1 _____ **PQ 2** _____ **PQ 3** _____ **PQ 4** _____

Fiscal Year _____ **TOTAL:** _____

POSITIONS WITHHELD:

Postal Quarter (PQ) 1 _____ **PQ 2** _____ **PQ 3** _____ **PQ 4** _____

Fiscal Year _____ **TOTAL:** _____

UNITED STATES
POSTAL SERVICE

March 3, 1994

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

As discussed, enclosed are instructions to the field regarding retesting for TEs upon elimination of an exam so that they can establish new register eligibility.

If you should have any questions, please do not hesitate to call me at (202) 268-3816.

Sincerely,

Sherry A. Cagnoli
Manager
Contract Administration (NALC/NRLCA)
Labor Relations

Enclosure

475 L'Enfant Plaza SW
Washington DC 20260

Establishing Examination Eligibility for Transitional Employees Under Test Battery 470

Battery Has Been Announced

Identify stations, branches, post offices and processing/ distribution centers which will be served by new battery register.

Fill in the dates the battery examination was announced to the public on Poster A. Specify where Transitional Employees (TEs) should submit their requests for scheduling if they have not already taken the new test battery.

Distribute completed Poster A for posting in identified stations, branches, post offices and processing/distribution centers.

TEs submit requests for scheduling in accordance with Poster A instructions.

For requests submitted, verify that old eligibility was due to exercise of Memorandum of Understanding (MOU) entitlement. If old eligibility was **not** due to exercise of MOU entitlement, scheduling under these procedures is not necessary.

For valid requests, if testing is complete:

- Verify if TE took examination.
- If so, scheduling is not necessary.
- If not, schedule as soon as possible.

For valid requests, if testing has not started or is in progress:

- Verify if application for TE has been scheduled.
- If TE has already been scheduled, no further action is necessary.
- If application is not located or has not been scheduled, schedule as soon as possible.

Battery Has Not Been Announced

Before examination is announced to the public, identify stations, branches, post offices and processing/distribution centers which will be served by new battery register.

Fill in the dates the battery examination will be announced to the public on Poster B. Specify where Transitional Employees (TEs) should submit their requests for scheduling.

Distribute completed Poster B for posting in identified stations, branches, post offices and processing/distribution centers at the same time the examination is announced to the public.

TEs submit requests for scheduling in accordance with Poster B instructions.

For requests submitted, verify that old eligibility was due to exercise of MOU entitlement. If old eligibility was **not** due to exercise of MOU entitlement, scheduling under these procedures is not necessary.

For valid requests, schedule TEs in first available session.

Important Notice to Transitional Employees

The Postal Service has implemented a new test battery which replaced the following four entrance examinations:

Clerk-Carrier
Mail Handler
Distribution Clerk, Machine
Markup Clerk, Automated

The test battery was announced to the public in your area from _____ to _____. Once the results for the new test battery are processed, hiring registers which were created from the four old examinations will be terminated.

If you exercised your entitlement as a Transitional Employee (TE) to take one of these old examinations, you must take the new battery test to maintain eligibility for a career position. If you took one of the old examinations as a TE, but have not taken the battery test, you may submit a request to the following address to be scheduled:

_____

_____

_____

TEs who have already taken the new test battery to reestablish eligibility will not be scheduled.

Poster A

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES POSTAL SERVICE AND THE AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: Transitional Employee

1. The parties agree to the following principles:

   a. The transitional work force will be comprised of noncareer, bargaining unit employees.

   b. Transitional employees will be used to cover duty assignments held pending reversion due to automation and residual vacancies withheld pursuant to Article 12. The term "held pending reversion" is a vacant duty assignment which is due to be reverted. The term "residual vacancies" are those positions that remain vacant after the completion of the voluntary bidding process.

   c. Transitional employees who are covering duty assignments held pending reversion or residual vacancies withheld pursuant to Article 12 will not be displaced from these assignments for the purpose of utilizing a casual employee.

   d. Transitional employees may also be used to replace part-time attrition. The term "attrition" refers to the reduction in the career employee complement for any reason.

   e. Transitional employees will be hired for a term not to exceed 359 calendar days and will have a break in service of at least 6 days between appointments.

   f. The use of transitional employees will be phased out as the deployed automated equipment becomes operationally proficient. Transitional employees covering positions withheld for career employees will be retained until the reassigned employees, who require training, qualify for their new duty assignments. The phase-out period for the accomplishment of the above objectives (individually or in combination) may not exceed 90 days from the date of deployment.

   g. Leave provisions for transitional employees are included in attachment A.

2. On a quarterly basis, the local union at the impacted office will be provided with an updated report which will provide the following (see Attachment B; Impacted Office Employee Status Report):

   a. The projected reduction for the transition period separated by category as follows: LDC 11, LDC 12 (letters), LDC 12 (Flats), and other clerical (except LDC 42).

   b. A baseline number for each category and a quarterly update of each category for full-time positions and part-time positions.

   c. A listing of transitional employees by name and the job number these employees are working on for positions withheld (see Attachment B1; Positions Withheld).

   d. A listing of transitional employees by name and the job number these employees are working on for positions held pending reversion (see Attachment B2; Positions Held Pending Reversion).

   e. A listing of transitional employees by name and a listing of part-time employees who were replaced by name for part-time assignments (see Attachment B3; Part-Time Assignments).

3. On a quarterly basis, management agrees to provide the following information at the regional level:

   a. Management will supply the union with a projected regional reduction of employees for the transition period (see Attachment C; REGIONAL COMPLEMENT REDUCTION REPORT).

   b. On a quarterly basis, management will supply the union with the projected reduction in each MSC, a listing of impacted offices, the actual attrition in the current quarter by impacted office, and a current listing of positions withheld by impacted office.

   c. Management will total the information in Item number 2 and supply a regional summary.

   d. Management will supply the local union, at the impacted site, with information regarding the equipment deployment schedule for the transition period. The deployment schedule will include

specific information (i.e., types of equipment, date of deployment, deployment site). The equipment deployment schedule will be updated annually.

e. Management will supply the local union at the impacted site with information regarding the impact. This information will also include the time frames for these impacts. Any changes to this information by management requires a 14-day advance notice to the local union. As equipment is deployed and becomes fully operational, the number of transitional employees specific to that deployment will be removed from those assignments in accordance with 1.f above.

4. Regional Determination--Number of Withheld Vacancies:

a. Within 7 days from the effective date of this agreement, the parties at the regional level will meet to determine the number of vacancies withheld during the previous 90-day period.

b. Solely for the purpose of applying this memorandum, withheld residual vacancies will be identified as those vacancies for which the union has received Article 12 notification at the regional level as being withheld for employees who may be involuntarily reassigned outside the installation. In order to be considered a withheld vacancy, the union, at the local level, had to be advised of the specific vacancy withheld by assignment number. This requirement had to be accomplished either by posted notice, letter to the local union, or verbally. Verbal notification can be considered only if the local union official agrees that such verbal notification occurred.

c. Once the withheld residual vacancies are identified, management may use transitional employees to backfill withheld vacancies consistent with the provisions of this Memorandum of Understanding.

5. Career Employee Option for Vacant Duty Assignment:

a. Prior to assigning a transitional employee to an impacted vacancy (held pending reversion), full-time career employees who are potentially impacted, who are performing identical duties, and who possess the identical skills of the vacant duty assignment, may opt for the vacant assignment.

This option procedure will consist of a written preselection of hours and days off by potentially impacted employees. The option procedure will not exceed 7 calendar days, and employees who failed to submit their preselection choices will be bypassed.

b. Employees will have 21 days from the effective date of this memorandum to submit their preselection options. Employees who assume new positions on different tours or employees new to a facility will have the opportunity to submit their preselection options within 7 days of assuming their new position. Employees will also have an opportunity to change or modify their preselection options once every 6 months.

6. Assignment of Part-Time Employees to a Withheld Vacancy:

a. Prior to assigning transitional employees to withheld/held pending reversion vacant positions, management will assign the senior qualified part-time flexible employee to cover the withheld/held pending reversion vacancy, and may backfill the part-time flexible employee's position with a transitional employee. The assignment of the part-time flexible employee to the withheld/held pending reversion vacancy does not change the workhour guarantees.

b. Part-time flexible employee hours worked in withheld/held pending reversion vacancies will not be considered when determining whether the criteria has been met for conversion to full-time pursuant to any maximization obligations the employer may have, or otherwise entitle the part-time flexible to any rights or benefits greater than other part-time flexible employees.

c. If the senior part-time flexible employee does not possess the required skills for the withheld/held pending reversion vacancy, the part-time flexible will be bypassed. If there are no qualified part-time flexible employees, management may use a transitional employee to backfill the withheld/held pending reversion vacancy.

7. Bidding Provisions--Full-time Distribution Clerk, Machine:

a. A full-time Distribution Clerk, Machine, who is restricted from bidding in accordance with

Article 37.3.B will be allowed to bid and these restrictions will be waived provided:

(1) The employee is currently working in a position which is identified to be eliminated due to automation;

(2) The employee has completed a 90-day probationary period.

b. If a full-time Distribution Clerk, Machine, is restricted from bidding pursuant to Article 37.3.B, and is the successful bidder on a duty assignment pursuant to Subsections a(1) and (2) above, the duty assignment will be held for the employee until his/her current position is eliminated or management may assign the employee to the duty assignment pursuant to the applicable craft articles of the National Agreement. This duty assignment will be covered in the same manner as a withheld position.

c. An employee who is restricted from bidding pursuant to Article 37.3.B may bid and be deemed the successful bidder only once.

8. Reassignment of Career Employees Outside of a Section, Craft, or Installation:

a. Prior to reassigning career employees outside of a section, craft, or installation, management will offer impacted career employees, on a seniority basis, the opportunity to work any existing transitional assignment. Impacted career employees must be currently qualified to backfill these assignments.

b. There will be no out-of-schedule pay or training provided to qualify the impacted employees for these temporary assignments.

9. Layoff of Career Employees:

a. Prior to laying off career employees, management will offer the impacted employees the opportunity to work any existing transitional assignments within the installation. The impacted employee must be currently qualified to backfill these assignments.

b. There will be no out-of-schedule pay or training provided to qualify the impacted employees for these temporary assignments.

10. Article 15:

a. The parties recognize that transitional employees will have access to the grievance procedure for those provisions which the parties have agreed apply to transitional employees.

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

c. Such employees will not be protected by the "just cause" provisions of Article 16. However, the employer cannot retaliate against transitional employees for filing grievances or invoking applicable contractual rights.

d. In any arbitration case concerning a discharge of a transitional employee, the union will bear the burden of proof in establishing that the employer's chief motivation for such a discharge was for retaliation for protected activity.

Attachments

Sherry A. Cagnoli
Assistant Postmaster General
Labor Relations Department
U.S. Postal Service

Moe Biller
President
American Postal Workers
Union, AFL-CIO

Date: 12/3/91

Q and A - Transitional Employees, APWU

The Postal Service and the American Postal Workers Union, AFL-CIO, have jointly produced this question and answer document on APWU transitional employees (TE). After each response, a specific reference is given from the Transitional Employee Agreement except where the response contains the appropriate reference.

1. Is the 359-day limitation within a calendar year?

   Answer: The 359 days run continuously and may cross over 2 calendar years. (ref. item 1.b)

2. Can a TE be assigned to more than one vacancy during the 359-day appointment?

   Answer: Yes. As long as it is a vacancy created in accordance with the TE Agreement. (ref. item 1.b)

3. What is the status of a TE who occupies a position that is filled or reverted? Can he/she remain on the rolls within the 359-day limitation until another vacancy is identified?

   Answer: The TE may or may not remain on the rolls. There is no requirement to terminate, but the TE may not work EXCEPT pursuant to the TE Agreement. (ref. item 1.b)

4. Could you give examples of residual vacancies?

   Answer: "Residual vacancies" are those positions that remain vacant after the completion of the voluntary bidding process. Two examples of residual vacancies are: (1) Where there is no bidder for a vacancy, and (2) there is no successful bidder. (ref. item 1.b)

5. If a PTF is converted to full-time, does the reduction in the PTF complement constitute attrition?

   Answer: No. You only have attrition if there is a reduction in the employee complement. (ref. item 1.d)

6. What happens to a TE who occupies a job filled by a presently qualified excessed employee?

   Answer: The TE is either terminated or assigned to another vacancy created pursuant to the TE Agreement. You can only assign work pursuant to the TE agreement. (ref. item 1.e)

7. What must management provide to the local union prior to the designation of future vacancies for TE?

   Answer: The information outlined in Part 2 of the TE agreement and Attachment B. (ref. item 2)

8. Can TEs be hired before vacancies exist?

   Answer: TEs may be hired before a vacancy exists. However, they cannot be worked/utilized EXCEPT in accordance with the TE Agreement. (ref. item 1.e)

9. Are you required to fill future vacancies with career employees once the complement is met?

   Answer: Once withholding levels are reached in accordance with Article 12, any additional withholdings require dialogue being held (in whatever form is presently utilized) at the regional level. (ref. item 4.c)

10. How are "impacted positions" identified on the local impact statement?

    Answer: The impacted positions will be identified by position and location. The exact phrasing of the Impact Statement will be used. (ref. item 2, attachment B)

11. Does the local union have to be notified of the withholding of vacancies to qualify under the 90-day review?

    Answer: Yes. The local union must be notified pursuant to paragraph 4b of the TE Agreement. (ref. item 4.b)

12. When does the 21-day period begin for employees to predetermine the workweeks they desire?

Answer: Local determination. After the employee has been notified that his position is impacted and opting procedures are in place. For example, management cannot let the 21-day period go by and then say that the person cannot opt. (ref. item 5.b)

13. Must each affected office establish a selection procedure?

Answer: Yes, if the office is affected. (ref. item 5.b)

14. Can an employee obtaining a new workweek return to his/her former assignment?

Answer: The employee may return to his/her former schedule only via the opting procedures. (ref. item 5.b)

15. Is this workweek selection process limited to the initial vacancy?

Answer: The process continues among those affected employees until a residual vacancy results. (ref. item 5.b)

16. How are TEs calculated in leave percentages?

Answer: TEs will be counted in the local leave program pursuant to local memoranda of understanding. If you have 100 employees (99 career employees and 1 TE), then for the purposes of leave you have 100 employees. (ref. item 1.g /attachment B)

17. What happens if no PTF or TE is qualified to perform the duties of a vacant position and it is necessary to provide on-the-clock training?

Answer: The PTF would be trained provided the assignment does not require additional training to backfill. In principle, a PTF will be with you for a long period of time. Therefore, you would train a PTF unless by moving this PTF, you would have to train two persons instead of one. (ref. item 6.a)

18. Can a senior PTF decline to fill the full-time vacancy?

Answer: If the assignment does not require training, the PTF must be assigned. If you have more than one qualified PTF (if the senior PTF prefers not to take it), be reasonable and assign the most junior. Give deference to seniority in this instance. (ref. item 6.a)

19. If an employee is serving a lock-in, what happens if the senior bidder completes the lock-in prior to release from the former assignment?

Answer: The employee goes to the bid assignment. (ref. item 7.b)

20. What occurs if the vacant position is a held pending reversion assignment and the impacting automation is deployed?

Answer: The position is reverted as long as the conditions in Part 1.f (of the TE Agreement) are met. The TE could no longer be allowed to work the assignment. (ref. item 1.f)

21. Can TEs be assigned to a section, craft, or installation prior to employees with retreat rights?

Answer: TEs can be assigned only to temporary vacancies (withheld/withheld pending reversion). Full-time employees can retreat only to permanent vacancies. (ref. item 8)

22. Are the limitations on excessing or layoffs intended to provide restrictions greater than those contained in Articles 12 and 6?

Answer: No. (ref. item 9)

23. Can TEs be used on nonscheduled days or beyond 40 hours prior to resorting to the ODL?

Answer: No. Do NOT manipulate the TE's schedule rather than using someone from the overtime desired list in order to avoid this principle. (ref. item Article 8, Section 4.G)

24. Will TEs wages be multi-rated depending on the work performed on a specific day?

Answer: No, that is not the intent. TEs will be paid at Step A or Step AA, as appropriate, of the part-time flexible basic hourly rate of the position to which they are assigned. (ref. item Article 9, Section 10.A)

25. Can TEs be disciplined?

Answer: No. Progressive discipline is not a factor in TE employment. This does not mean that there is no dialogue. (For example, a manager informing the person that they have performed unsatisfactorily. (ref. item 10.c)

26. Will TEs be required to wear uniforms?

Answer: This is a question that is subject to further discussion at the national level.

27. Are part-time regulars provided with an option for assignments prior to TEs?

Answer: No, except in the maintenance craft. (ref. item 5.a)

28. Is there a contractual requirement to assign unassigned regulars prior to placing a PTF or a TE in a vacancy?

Answer: Yes, pursuant to Article 37, Section 3.F.10.

29. Under what circumstances can vacancies be withheld in the maintenance or MVS crafts and for what period of time?

Answer: Under Article 12 provisions, vacancies in the maintenance or MVS crafts may be withheld for an indefinite period of time. However, where there is no anticipation of the vacancy being filled by an excessed employee, the vacancy should not be withheld.

30. Can TEs be placed in jobs that were reverted?

Answer: No. Once reverted, those jobs are gone. You can, however, create duty assignments and fill residual vacancies pursuant to the TE agreement. (ref. item 1.c)

31. We have been reverting positions identified as impacted for a period of time. Can we reclaim those positions and fill them with a TE under the withheld pending reversion clause? If no, what is the start date for accumulating these positions?

Answer: No. Start date, 12-03-91. Once a position is reverted, it is gone. (ref. item 1.c)

32. We currently have no PTFs in the MPLSM area. May we place TEs in the impacted area in place of part-time flexible employees?

Answer: TEs may be placed in specific positions, not areas. (ref. item 1.d)

33. Is opting and/or the one bid counted toward the five-bid limitation of the contract?

Answer: No. The opting procedure is not a bid. (ref. item 7.c)

34. When TEs are separated, do we pay them terminal leave?

Answer: TEs are paid only for unused accrued annual leave. (ref. item 1.g)

35. For attachments B 1-3, do these reports have to be in this specific format or can we use CMS reports, etc., as long as the information they require is included?

Answer: Utilize the report format provided. (ref. item 2)

36. Under item 8.a., page 5, if this is an excessing out of the installation, what happens to the seniority rights of the excessed employee who opts to take a transitional assignment?

Answer: Opting has no effect on seniority.

37. What is the baseline date for each category on the Impacted Office Employee Status Report? It is our understanding that it is A/P 11, FY 1991.

Answer: 12-03-91 is the baseline date.

38. Does the Memorandum permit the hiring of a TE to cover for the attrition of a full-time unassigned employee?

Answer: No. TEs may only be used pursuant to the TE Agreement (withheld/withheld pending reversion or to cover PTF attrition). (ref. item 6)

39. Is the "impacted site" the location where the equipment is being deployed or the location where the impacted position has been identified?

Answer: It could be both. For example, a site which receives RBCS impacts assignments over a wide area. (ref. item 2.f)

Sherry A. Cagnoli
Assistant Postmaster General
Labor Relations Department
U.S. Postal Service

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

ATTACHMENT A

TRANSITIONAL EMPLOYEE ANNUAL LEAVE PROVISIONS:

I. GENERAL

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

1. Accrual of Annual Leave. Transitional employees 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	Hours of Annual Leave Earned Per Pay Period
1 hour for each	20	1
unit of 20 hours	40	2
in pay status in	60	3
each pay period	80	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 transitional employee may receive a lump-sum payment for accumulated annual leave subject to the following condition:

   a. A transitional employee 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 transitional employees 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 transitional employee 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, transitional employees 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. Transitional Employee Responsibilities. Transitional employees are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences. In addition, transitional employees 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 transitional employee. 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.

ATTACHMENT B

IMPACTED OFFICE EMPLOYEE STATUS REPORT

Projected Reduction for Transition Period:

LDC 11	_____
LDC 12/Letters	_____
LDC 12/Flats	_____
Other Clerical; except LDC 42	_____
Total:	_____

QUARTERLY UPDATE

FULL-TIME:	Baseline	PQ 1	PQ 2	PQ 3	PQ 4
LDC 11	_____	_____	_____	_____	_____
LDC 12/Letters	_____	_____	_____	_____	_____
LDC 12/Flats	_____	_____	_____	_____	_____
Other Clerical; except LDC 42	_____	_____	_____	_____	_____
Total:	_____	_____	_____	_____	_____

PART-TIME:	Baseline	PQ 1	PQ 2	PQ 3	PQ 4
LDC 11	_____	_____	_____	_____	_____
LDC 12/Letters	_____	_____	_____	_____	_____
LDC 12/Flats	_____	_____	_____	_____	_____
Other Clerical; except LDC 42	_____	_____	_____	_____	_____
Total:	_____	_____	_____	_____	_____

POSITIONS WITHHELD - SEE ATTACHMENT B1

POSITIONS HELD PENDING REVERSION - SEE ATTACHMENT B2

PART-TIME ASSIGNMENTS - SEE ATTACHMENT B3

ATTACHMENT B3

Part-time Assignments

Transitional Employee's Name	Replaced Part-time Employee's Name

ATTACHMENT B1

Positions Withheld

Transitional Employee's Name	Job Number

ATTACHMENT B2

Positions Held Pending Reversion

Transitional Employee's Name	Assignment Job Number

ATTACHMENT C

REGIONAL COMPLEMENT REDUCTION REPORT

REGION _____ FY _____

PROJECTED REGIONAL REDUCTION _____

Division _____
MSC: Projected Reduction:

_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
Divisional Total: _____

Impacted Offices:	ATTRITION PQ1	PQ2	PQ3	PQ4	POSITIONS WITHHELD PQ1	PQ2	PQ3	PQ4
_____								
_____								
_____								
_____								
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_____								
_____								
_____								
_____								
*DIVISIONAL SUBTOTALS:								

* Regional totals calculated on final page of report.

ATTACHMENT C - Continued

REGIONAL COMPLEMENT REDUCTION REPORT

SUMMARY

_____ REGION / FY _____

PROJECTED REGIONAL REDUCTION: _____

REGIONAL TOTALS

ATTRITION:

Postal Quarter (PQ) 1 _____ PQ 2 _____ PQ 3 _____ PQ 4 _____

Fiscal Year _____ TOTAL: _____

POSITIONS WITHHELD:

Postal Quarter (PQ) 1 _____ PQ 2 _____ PQ 3 _____ PQ 4 _____

Fiscal Year _____ TOTAL: _____

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: Transitional Employees

The parties agree that only the following articles and portions of articles of the National Agreement as they appear in bold face print below apply to transitional employees:

Article 1

Article 2

Article 3

Article 5

Article 7

ARTICLE 7
EMPLOYEE CLASSIFICATION

Section 1. Definition and Use

* * * * *

C. Transitional Work Force--APWU

1. The transitional work force shall be comprised of noncareer, bargaining unit employees utilized to fill vacated assignments as follows:

a. Transitional employees may be used to cover duty assignments which are due to be eliminated by automation and residual vacancies withheld pursuant to Article 12.

b. Transitional employees may be used to replace part-time attrition. Over the course of a pay period, the Employer will make a reasonable effort to ensure that qualified and available part-time flexible employees are utilized at the straight-time rate prior to assigning such work to transitional employees working in the same work location and on the same tour.

2. Transitional employees shall be hired pursuant to such procedures as the Employer may establish. They will be hired for a term not to exceed 359 calendar days for each appointment. Such employees have no daily or weekly work hour guarantees. Transitional employees will have a break in service of at least 6 days between appointments.

3. The use of transitional employees will be phased out as the deployed automated equipment becomes operationally proficient.

Article 8

ARTICLE 8
HOURS OF WORK

Section 3. Exceptions

The above shall not apply to part-time employees and transitional 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.

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

Section 4.G. Overtime Work

Transitional employees shall be paid overtime for work performed in excess of forty (40) work hours in any one service week. Overtime pay for transitional employees 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 transitional employee in excess of eight (8) work hours in a service day, 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. employees shall be paid additional compensation at the rate of ten percent (10%) of the base hourly straight-time rate.

For time worked between the hours of 6:00 p.m. and 6:00 a.m. transitional employees shall be paid additional compensation at the rate of ten percent (10%) of the basic hourly straight-time rate.

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.

The preceding paragraph shall apply to transitional employees.

Article 9

ARTICLE 9
SALARIES AND WAGES

Section 10. Transitional Employee

During the term of the 1990 Agreement, transitional employees' hourly rate will be as provided in this section.

A. Transitional employees hired during the life of this agreement will be hired at Level 4, Step A, part-time flexible employee basic salary.

B. Transitional employees will be paid at Step A of the part-time flexible basic hourly rate of the position to which they are assigned.

Article 10

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 transitional employees, 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.

Article 11

ARTICLE 11
HOLIDAYS

Section 6. Holiday Schedule

D. Transitional employees will be scheduled for work on a holiday or designated holiday after all full-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 nonvolunteers being scheduled to work a nonscheduled day or any full-time nonvolunteers 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 17 - Sections 2, 6, and 7

Article 18

Article 19

ARTICLE 19
HANDBOOKS AND MANUALS

New paragraph 3: 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 transitional employees only to the extent consistent with other rights and characteristics of transitional employees negotiated in this Agreement and otherwise as they apply to the supplemental work force. The Employer shall have the right to make changes to handbooks, manuals and published regulations as they relate to transitional employees 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 36

Article 42

Article 43

Only the following Memorandums of Understanding from the 1990 National Agreement shall apply to Transitional Employees:

Use of Privately Owned Vehicles
Leave Sharing
Leave Without Pay

Sherry A. Cagnoli
Assistant Postmaster General
Labor Relations Department
U.S. Postal Service

Moe Biller
President
American Postal Workers
Union, AFL-CIO

Date: 12/3/91

UNITED STATES POSTAL SERVICE

Washington, DC 20260

DATE: DEC 0 6 1993

OUR REF: LR400:PASgro:cmv:20260-4125

SUBJECT: Casual Time Toward 359 Day Term

TO: Paul V. Tartaglia
Manager, Human Resources
New York Metro Area

This memorandum is in response to your November 19 correspondence and concerns the correct method of determining a 359-day term for a Transitional Employee (TE) who has served casual appointment(s) for purposes of a 6-day break and eligibility towards taking in-service examinations.

359-DAY TERM/6-DAY BREAK

In determining when a TE has served a 359-day term, it is necessary to add any casual time served immediately prior to becoming a TE WHEN THERE IS NO BREAK IN SERVICE BETWEEN THE CASUAL AND TE APPOINTMENT. For example, a TE was serving a casual term and had served 80 days and was then converted, without a break, to a TE. The 80 days count toward the 359-day term and that TE must be broken after 279 days as a TE (80 day casual, 279 day TE = 359 days).

If there was any break between the casual appointment and the TE appointment, then he/she can serve the entire 359 days as a TE.

IN-SERVICE EXAMINATION ELIGIBILITY

In determining whether or not a TE has accumulated the 180 days as a TE to be eligible for the in-service examination (in accordance with the September 24 MOU), no casual time is added, regardless of whether there was a break or not.

Simply put, the 180 days must be all as a TE.

In addition, all TE time counts towards the 180 days required to take the in-service exams, even if there is a break. For example, if an employee works 100 days as a TE, is broken for the 6 days and returned, that employee would only need to work 80 additional days to accumulate the 180 days required to be eligible to take the in-service exams (100 + 80 TE days = 180).

If there are any questions regarding the foregoing, please contact Peter Sgro of my staff at 202-268-3824.

[signature illegible]

William J. Downes
Manager
Contract Administration APWU/NPMHU
Labor Relations

cc: Managers, Human Resources, All Areas
Managers, Human Resources, All Districts

bcc: Mr. Mahon
Mr. Downes
Mr. Warren
Ms. Cagnoli
Mr. Froelke
Mr. DeMarco
Mr. Vegliante
Mr. Scola
Mr. Jacobs
File: TE
Sgro Reading File

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

In the interest of enhancing career employment opportunities for APWU transitional employees, the Postal Service and the APWU agree as follows:

1. APWU transitional employees (TEs) (as set forth in the TE agreements of 12/31/91 and 2/2/93), who have completed 180 days of employment as a TE and are still on the TE rolls, may take two entrance examinations for career positions in APWU-represented crafts. Only two such examination opportunities will be provided each eligible TE pursuant to this memorandum, except that eligible TEs will be permitted to retake any exams which are subsequently discontinued and replaced.

2. Eligible TEs who wish to take entrance examinations for career positions in APWU-represented crafts must submit their requests in writing to the appropriate personnel office. The local union will be provided written notification of TEs who have submitted such requests. The requested examinations will be administered to eligible TEs consistent with normal scheduling of the exams.

3. Each TE's exam results will be scored, including any applicable veterans' preference points, and passing scores will be merged with the existing register for that exam. Eligible TEs who already have a passing test score on the same register will have the option of merging the new test score with the existing register in lieu of their old test score. Thereafter, normal competitive selection procedures will apply in making appointments to career positions.

4. This agreement will be effective through November 20, 1994. Nothing herein is intended to limit any veterans' preference in hiring as established by law.

Joseph J. Mahon, Jr.
Vice President
Labor Relations
U.S. Postal Service

Date September 24, 1993

Moe Biller
President
American Postal Workers
Union, AFL-CIO

Date September 24, 1993

LABOR RELATIONS

UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4000

September 24, 1993

Mr. Moe Biller
President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Moe:

This letter is to follow up a meeting with Mr. James McCarthy and Mr. Tommy Thompson, Assistant Directors of the Clerk Craft and Peter Sgro of my staff on September 16. The issues discussed at the meeting were if APWU Clerk TEs are trained and qualify on the skills of a duty assignment, do these skills carry over when they are hired as career employees, and are they currently considered qualified?

The position of the Postal Service is that APWU Clerk TEs who are properly trained on a duty assignment and qualify in their TE appointments will be considered qualified on the duty assignments as career employees. Properly trained will mean the employee received the same training career employees receive and he/she qualified under the same standards imposed on career employees.

Although the meeting was held with APWU Clerk officials, this position would apply to all APWU craft TEs. If you disagree with the above stated position, please contact this office with your objections and/or grounds of disagreement.

If there are any questions, please contact Mr. Sgro at (202) 268-3824.

Sincerely,

Anthony J. Vegliante

Anthony J. Vegliante
Manager
Grievance and Arbitration

cc: Mr. Green
Mr. Jacobson

WILLIAM J HENDERSON
VICE PRESIDENT EMPLOYEE RELATIONS

UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4200

September 28, 1993

MEMORANDUM FOR MANAGERS, HUMAN RESOURCES (AREA)
MANAGERS, HUMAN RESOURCES (DISTRICT)

SUBJECT: Implementation Procedures for Enhanced Career Opportunities for APWU Transitional Employees

Enclosed is a guidance package for implementation of the Memorandum of Understanding (MOU) dated September 24, 1993. It essentially provides that eligible Transitional Employees (TE's) may take two entrance examinations for positions in APWU-represented crafts. In order to minimize additional work load on personnel offices, testing may be accomplished along with other required quarterly veteran testing. For examinations which are not otherwise scheduled quarterly, testing is to be done no later than within six months of when request was made.

Offices should immediately notify APWU-represented TE's who already meet the service requirements that they may submit a request and be scheduled for the examination. Although the new battery test has been deployed, the 440, 400, and 450 examinations can continue to be used for this testing, until your office has opened the entrance battery and results have been loaded to your hiring and testing registers.

Please contact Michael Phillips on (202) 268-3976 or Beth Campbell on (202) 268-3973 if you or your staff have questions or need additional information.

for William J. Henderson

Enclosure

cc: Samuel Green, Jr.
Peter A. Jacobson
Joseph J. Mahon, Jr.
Sherry Cagnoli

202 268-3783
FAX 202-268-3074

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

In the interest of enhancing career employment opportunities for APWU transitional employees, the Postal Service and the APWU agree as follows:

1. APWU transitional employees (TEs) (as set forth in the TE agreements of 12/31/91 and 2/2/93), who have completed 180 days of employment as a TE and are still on the TE rolls, may take two entrance examinations for career positions in APWU-represented crafts. Only two such examination opportunities will be provided each eligible TE pursuant to this memorandum, except that eligible TEs will be permitted to retake any exams which are subsequently discontinued and replaced.

2. Eligible TEs who wish to take entrance examinations for career positions in APWU-represented crafts must submit their requests in writing to the appropriate personnel office. The local union will be provided written notification of TEs who have submitted such requests. The requested examinations will be administered to eligible TEs consistent with normal scheduling of the exams.

3. Each TE's exam results will be scored, including any applicable veterans' preference points, and passing scores will be merged with the existing register for that exam. Eligible TEs who already have a passing test score on the same register will have the option of merging the new test score with the existing register in lieu of their old test score. Thereafter, normal competitive selection procedures will apply in making appointments to career positions.

4. This agreement will be effective through November 20, 1994. Nothing herein is intended to limit any veterans' preference in hiring as established by law.

Joseph J. Mahon, Jr.
Vice President
Labor Relations
U.S. Postal Service

Date September 24, 1993

SEP 1993
Received
Office of The
Executive
Vice President

Moe Biller
President
American Postal Workers
Union, AFL-CIO

Date September 24, 1993

Implementation Procedures for Enhanced Career Opportunities for APWU TEs

1. Notify APWU TEs

Post a notice in post offices, stations, branches and processing and distribution centers where current APWU Transitional Employees (TEs) are employed explaining that:

APWU TEs may take an entrance examination for any register used to fill career positions for APWU crafts if they have completed 180 days of employment as a TE **and** are still on the rolls as a TE. Two opportunities will be provided to each eligible TE. Former TEs who are no longer employed by the Postal Service are not eligible to request to take the examination under the USPS-APWU Memorandum of Understanding (copy attached). TEs who are being reappointed and are merely serving their six-day break in service can be scheduled for the examination.

APWU TEs may submit their request to take the examination at any time **after** they have met the 180-day requirement. Requests should be submitted to the personnel office, or if there is no personnel office on site, to the TE's postmaster or immediate manager.

Upon receiving the request, the personnel office will provide the TE with a Form 2479-A/B, *Application Card/Admission Card* to be completed, with instructions on where to return the completed card. The TE must apply to take the entrance examination for a register that services the installation where he or she is currently employed. Applications may be accepted in person or by mail.

Future APWU TEs should be advised at the appointment stage of the employment process that they will become eligible to request the examination after completion of the 180-day requirement. They should be advised that it will be their responsibility to submit a request for the examination once the service requirement is met.

2. Verify Entitlement

The personnel office verifies that employees meet the 180-day requirement and stamps Form 2479-B **"Delayed - APWU TE."** TEs who have not yet met their 180-day requirement in their current appointment, but did meet their 180-day requirement in a previous APWU TE appointment, are eligible. Each APWU TE gets an opportunity to take two entrance examinations pursuant to the Memorandum of Understanding. An eligible TE could take two different entrance examinations or the same entrance examination twice.

Eligible TEs will also be permitted to retake any examination which is subsequently discontinued and replaced. Taking an entrance examination as a part of an announcement to the general public does not count against the two opportunities pursuant to the Memorandum of Understanding.

3. Schedule Examination

Major examinations should be given to eligible TEs who have submitted requests on a quarterly basis. However, in no event should TEs be scheduled for examinations later than six months from when the request was made.

To the extent feasible, testing should be scheduled to coincide with other testing needs, e.g., veteran testing, inservice or qualification testing for special programs.

4. Administer Examination

For examinations that are also used for non-APWU crafts, during the completion of the biographical grids, examiner and monitors should be especially watchful of applicants who have their 2479s stamped **"Delayed - APWU TE."** Completion of the job choice grid must be monitored so that APWU TEs grid only APWU crafts and no other choice. As described in the Applicant Instructions, APWU TEs will grid circle labeled **"3"** for **"Delayed"** in the Special Instructions grid. They will also grid **"Entrance"** for the Exam Type grid. If the examination is for an Area Eligibility Register, the applicant may choose up to three offices. Examiner and monitors should not attempt to edit office choices.

5. Merge Results

Ratings are merged with existing eligibilities on the Hiring and Testing data base or on manual registers. If a rating inadvertently gets loaded to a register not used for APWU crafts, the rating should be deleted or inactivated from that register. If an APWU TE already has an active rating on the register, then the TE has the option of replacing the existing rating with the new one. However, the TE must be informed that if he or she elects to keep their existing rating, then the eligibility period of the existing rating will stand as it is and cannot be changed.

UNITED STATES POSTAL SERVICE

Washington, DC 20260

DEC 2 1 1993

DATE: DEC 1 0 1993

OUR REF: LR400:PASgro:cmv:20260-4125

SUBJECT: APWU Transitional Employee Issues Clarification

NORTHEAST AREA CUSTOMER SERVICE AND SALES		
DATE 12/16/93 SOURCE HOS		
	ACTION	INFO
Area Mgr., Customer Service and Sales		✓
Mgr., Human Resources already copied		
Mgr., Finance		
Mgr., Customer Service Support		
Mgr., Operations Program Support		
Mgr., Sales and Account Management		
Area Mgr., Processing and Distribution already copied		
District Mgrs., Customer Service Columbus		
Other		
SUSPENSE DATE		

TO: Robert F. Hoersdig
Acting Manager, Human Resources
Columbus District
850 Twin Rivers Drive
Columbus, OH 43216-9993

This memorandum is in response to your November 23 correspondence requesting clarification on two APWU TE issues, Holiday and Overtime Scheduling.

Holiday Scheduling

Your question reads, "How do APWU TEs fall into the pecking order for holiday scheduling?"

The contract is clear on this issue. Article 11.6.E. states:

> "Transitional Employees will be scheduled for work on a holiday or designated holiday after all full-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 nonvolunteers being scheduled to work a nonscheduled day or any full-time nonvolunteers 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." (Underlining added)

Since you have locally negotiated a pecking order that calls for full-time volunteers on a nonscheduled day, the LMOU would apply. Not many anticipated the inclusion of TEs when negotiating Local Memoranda, so when the agreement was made with the APWU, this fact was taken into consideration. The intent is to respect the integrity of the local agreements with the inclusion of the last sentence.

Based on your specific circumstance and the LMOU pecking order provided, the TEs would be scheduled after #3 and before #4.

Overtime Scheduling

Your question is, "Does the Overtime Desired List have to be given 12 hours prior to scheduling TEs for overtime?"

Before scheduling TEs for overtime, the OTDL must be maximized, unless there is a need for concurrent scheduling. TEs may be scheduled to work before the OTDL is maximized if the operational need dictates simultaneous scheduling of overtime.

For example, if the operational need requires 4 employees to work 2 hours overtime in order to get the mail out and there are 2 on the OTDL who have worked 8 hours, 2 TEs may be scheduled to work before those 2 OTDL employees are maximized at 12 hours since the operational need mandates concurrent scheduling.

I hope this answers your request. If it does not or if there are any further questions, please contact Peter Sgro of my staff at 202-268-3824.

/ORIGINAL SIGNED/

William J. Downes
Manager
Contract Administration APWU/NPMHU
Labor Relations

bcc: Mr. Mahon
Mr. Downes (CA 596)
Mr. Warren
Ms. Cagnoli
Mr. Froelke
Mr. DeMarco
Mr. Vegliante
Mr. Scola
Mr. Jacobs
Area Managers, Processing and Distribution
~~Area Managers, Customer Service and Sales~~
Managers, Human Resources, All Areas
File: TE
Sgro Reading File

UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260

November 5, 1992

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This letter is in reference to our October 30 discussion regarding Transitional Employees (TEs) hired to perform distribution on LSMs.

The parties agree that such employees will be paid at level 5 until they are fully qualified. After qualification, they will be paid at level 6 for time worked on an LSM and at level 5 for time spent performing other work.

Sincerely,

Anthony J. Vegliante
General Manager
Programs and Policies Division
Office of Contract Administration
Labor Relations

154

TEs Higher Level Pay

United States Postal Service
475 L'Enfant Plaza SW
Washington, DC 20260

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: HOC-4A-C 16049
CLASS ACTION
ROCKFORD, IL 61125

Dear Mr. Burrus:

Recently, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether transitional employees are entitled to higher level pay.

In this case, the grievants (TEs) were hired and assigned to Mail Processor, Level 4 positions. Periodically, the grievants are assigned to Distribution Clerk work, Level 5 and they are seeking higher level pay.

Transitional employees are not covered by Article 25, Higher Level Assignments and normally do not receive higher level pay. An exception to this provision is when a TE who is hired to fill a PTF vacancy, which requires specific skill training (LSM, FSM, SPBS), receives higher level pay only for time worked on the work assignment for which the TE has trained and qualified. Also, a TE hired to fill a duty assignment which has been withheld or held pending reversion will be paid for all work performed at the level of that duty assignment.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case to the parties at Step 3 for application of the TE agreement dated December 3, 1991.

Time limits were extended by mutual consent.

Sincerely,

Anthony J. Vegliante
Manager
Grievance and Arbitration
Labor Relations

William Burrus
William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

Date: 4-7-93

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

June 13, 1997

Dear Mr Bazylewicz:

I have been provided documentation regarding the hiring of casual employees which indicates that their compensation is based on the EAS salary schedule. I am in need of assurance that such casuals are included in the calculations to determine compliance with Article 7 of the national agreement.

I am also in need of verification of the procedures used to insure that casuals employed during the Christmas period have previously served as casuals. The provisions of Article 7, Section 1.B.4 provides that such casuals "may be reemployed during the Christmas period". This request is that the union may monitor compliance with this provision of the national agreement.

Thank you for your attention to this matter.

Sincerely,

William Burrus
Executive Vice President

Peter Bazylewicz
Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

October 12, 1995

OCT 1995

Mr. William Burrus
Executive Vice-President
American Postal Workers Union,
AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Dear Bill:

This letter responds to your inquiries regarding the use of a temporary agency during the pilot phase of the Call Centers in Tampa, Florida, and Phoenix, Arizona. The following information provides the Postal Service's position regarding this matter.

These employees were not hired as casuals but were subcontracted from Kelly and Manpower Services to assist the Postal Service in its pilot test. Therefore, pursuant to the Step 4 grievance settlement agreement (dated 6/28/89, # H7C-NA-C 35) and William J. Downes' subsequent May 12, 1994, correspondence, temporary employees who are used to perform short-term work shall be considered as casual employees pursuant to Article 7 of the National Agreement. Further, that the term of these employees will be consistent with Article 7 of the National Agreement.

Additionally, you inquired into the method used by the Postal Service to account for the number of casuals employed in support service activities. The ORPES report reflects the number of employees in each category. The national pilot Call Centers' numbers have been manually reviewed to insure compliance, however, future ORPES reports will footnote this number and incorporate the amount as part of the casual career cap.

Should there be any questions regarding the foregoing, you may contact me at (202) 268-3831.

Sincerely,

Thomas J. Valenti

Thomas J. Valenti
Labor Relations Specialist
Contract Administration (APWU/NPMHU)

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

SENIOR ASSISTANT POSTMASTER GENERAL
EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

June 22, 1976

MEMORANDUM TO: Regional Postmasters General

SUBJECT: Utilization of Casual Employees

As a result of a number of grievances received by this office, it is necessary to reaffirm the responsibilities of the U. S. Postal Service pursuant to the provisions of the National Agreement regarding the utilization of casual employees. The provisions in Article VII, Section 1 B 1 of the 1975 National Agreement state in part, "during the course of a service week, the employer will make every effort to ensure that qualified and available part-time flexible employees are utilized at the straight time rate prior to assigning such work to casuals."

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 a 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.

Furthermore, in keeping with the intent of the National Agreement that casuals are to be utilized as a supplemental work force, every effort should be made based on individual circumstance to utilize part-time flexible employees across craft lines (see Article VII, Section 2) in lieu of utilizing casual employees.

Please ensure that local officials are made aware of these guidelines concerning the utilization of casual employees.

James V. P. Conway

cc: Regional Directors, E&LR
Mr. Bolger
Mr. Dorsey

bcc: Messrs. Gildea, Merrill, [illegible]
Gillespie, Gandal, Del Grosso

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

The United States Postal Service, the American Postal Workers Union, AFL-CIO, and the National Association of Letter Carriers, AFL-CIO, hereby agree to the following remedy for the postal installations which have 200 or more man years of employment in the regular work force and have violated the 90/10 staffing requirement of Article 7, Section 3.A. The parties agree further to remand the following remedy to the aforementioned installations for application of the terms of this Memorandum of Understanding.

REMEDY FOR PAST VIOLATIONS:

I. The remedy shall be retroactive to November 6, 1986, for the American Postal Workers union, AFL-CIO and for the National Association of Letter Carriers, AFL-CIO.

II. Any installation with 200 or more man years of employment in the regular work force which is not presently in compliance with Article 7, Section 3.A, management shall immediately convert sufficient part-time flexibles to full-time regulars to meet the 90/10 staffing requirement.

III. In any installation with 200 or more man years of employment in the regular work force which was not in compliance with the 90/10 staffing requirement in any particular accounting period during the period commencing November 6, 1986, and ending when the facility is in compliance, management will:

   A. Identify those employees who would have been earlier converted to full-time regular had the installation been in compliance with the 90/10 staffing requirement.

   B. Determine the date on which each employee should have been converted.

IV. Each employee shall then be paid $35.00 for each week commencing on the date the employee should have been converted to full-time regular and ending on the date the employee was actually converted.

PROSPECTIVE REMEDY:

I. Any installation with 200 or more man years of employment in the regular work force which fails to maintain the 90/10 staffing ratio in any accounting period, shall immediately convert and compensate the affected part-time employee(s) retroactively to the date which they should have been converted as follows:

A. Paid the straight time rate for any hours less than 40 hours (five 8 hour days) worked in a particular week.

B. Paid the 8 hour guarantee for any day of work beyond five (5) days.

C. If appropriate, based upon the aforementioned, paid the applicable overtime rates.

D. Further, the schedule to which the employee is assigned when converted will be applied retroactively to the date the employee should have been converted and the employee will be paid out-of-schedule pay.

E. Where application of Items A-D, above, shows an employee is entitled to two or more rates of pay for the same work or time, management shall pay the highest of the rates.

William J. Downes
Director
Labor Relations Department

DATE 4/14/89

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

DATE 4-14-89

Lawrence G. Hutchins
Vice President
National Association of
Letter Carriers, AFL-CIO

DATE 4/14/89

90/10 SETTLEMENT

JOINT STATEMENT OF CLARIFICATION OF THE

REMEDY

The parties hereby agree to clarify the prospective remedy of the 90/10 settlement as follows:

1. The 365 day restriction for bidding pursuant to Article 37.3.B.2, will begin the day the employee should have been converted to full-time Distribution Clerk, Machine.

2. The calculation of time for step increases for promotions will begin on the day the employee was actually converted to full-time and not when he should have been converted.

The settlement of this dispute has no impact on the pending grievance over proper compensation and step placement when promoted.

William J. Downes
Director
Office of Contract Administration
Labor Relations Department
AFL-CIO

DATE 6-29-89

William Burrus
Executive Vice President
American Postal Workers
Union,

DATE 7-14-89

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

November 7, 1989

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

Dear Mr. Burrus:

In a recent conversation with members of my staff, you indicated that it is the position of the American Postal Workers Union that Article 12, Section 8, of the National Agreement prohibits the involuntary reassignment of part-time flexible employees.

The position of the Postal Service is that the provisions of Article 12.8. do not preclude the involuntary reassignment of part-time flexible employees.

The position of the Postal Service has remained unchanged since at least 1976 when this same question was raised by former APWU Director, Industrial Relations, Emmet Andrews. After being advised of the Postal Service's position on the issue, there is no indication that the APWU pursued the matter any further.

Further, it is the Postal Service's position that a 200 or more manyear facility that has excessed in accordance with Article 12 shall be in compliance with Article 7.3.A (90/10) at the close of the accounting period in which the excessing has been completed.

Should you have any additional questions concerning this matter, please contact Anthony J. Vegliante at 268-3811.

Sincerely,

Joseph J. Mahon, Jr.
Assistant Postmaster General

THE DEPUTY POSTMASTER GENERAL
Washington, DC 20260-0050

March 18, 1983

MEMORANDUM FOR REGIONAL POSTMASTERS GENERAL

SUBJECT: 90/10 Staffing

Article 7, Section 3A of the USPS-APWU/NALC National Agreement requires that all postal installations which have 200 or more man years of employment in the regular work force be staffed with 90% full-time employees. To ensure compliance with this provision, each affected installation is to be notified to make a staffing review each accounting period.

If upon review, an affected installation is not in compliance, immediate action is to be taken to comply with the 90% full-time requirement. It should be noted, however, that pursuant to Article 12, Section 5B2 of the USPS-APWU/NALC National Agreement, the withholding of positions to accommodate excess employees is permitted. Except for those positions being withheld to accommodate reassigned employees the installation must be staffed with 90% full-time employees. This staffing requirement is a firm commitment, and failure to comply is unacceptable.

C. Neil Benson

cc: Joseph F. Morris
James C. Gildea
Harry Penttala
Eugene C. Hagburg

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. Robert Tunstall
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

JUL 18 1985

Re: A. Paquette
Manchester, NH 03103
H4C-1K-C 1901

W. Charron
Manchester, NH 03103
H4C-1K-C 2575

J. Horan
Manchester, NH 03103
H4C-1K-C 2576

A. Paquette
Manchester, NH 03103
H4C-1K-C 2577

A. Paquette
Manchester, NH 03103
H4C-1K-C 2626

Dear Mr. Tunstall:

On July 12, 1985, we met to discuss the above-captioned grievances at the fourth step of our contractual grievance procedure.

The issue in these grievances is whether LSM operators are entitled to an additional break when working in an overtime status.

During our discussion, we mutually agreed to remand these cases to the parties at Step 3 for application of the settlement agreement reached below:

> The USPS acknowledges that the intent of Section 430 of the PO-405 Handbook is that management should formulate work schedules

that will allow MPLSM crews to have a 15-minute break after approximately 2 hours while conforming to Section 430, a,b, and c of the PO-405 Handbook. This applies in instances where overtime is involved.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand these cases.

Sincerely,

Muriel Aikens
Muriel Aikens
Labor Relations Department

Robert S. Tunstall
Robert Tunstall
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

LABOR RELATIONS
MR. FRANK DILELLA
931-5030 FAX

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

The United States Postal Service, the American Postal Workers Union, AFL-CIO, and the National Association of Letter Carriers, AFL-CIO, hereby agree to resolve the following issues which remain in dispute and arise from the application of the overtime and holiday provisions of Articles 8 and 11 of the 1984 and 1987 National Agreements. The parties agree further to remand those grievances which were timely filed and which involve the issues set forth herein for resolution in accordance with the terms of this Memorandum of Understanding.

12 Hours In A Work Day and 60 Hours In A Service Week Restrictions

The parties agree that with the exception of December, full-time employees are prohibited from working more than 12 hours in a single work day or 60 hours within a service week. In those limited instances where this provision is or has been violated and a timely grievance filed, full-time employees will be compensated at an additional premium of 50 percent of the base hourly straight time rate for those hours worked beyond the 12 or 60 hour limitation. The employment of this remedy shall not be construed as an agreement by the parties that the Employer may exceed the 12 and 60 hour limitation with impunity.

As a means of facilitating the foregoing, the parties agree that excluding December, once a full-time employee reaches 20 hours of overtime within a service week, the employee is no longer available for any additional overtime work. Furthermore, the employee's tour of duty shall be terminated once he or she reaches the 60th hour of work, in accordance with Arbitrator Mittenthal's National Level Arbitration Award on this issue, dated September 11, 1987, in case numbers H4N-NA-C 21 (3rd issue) and H4C-NA-C 27.

931-5030

Holiday Work

The parties agree that the Employer may not refuse to comply with the holiday scheduling "pecking order" provisions of Article 11, Section 6 or the provisions of a Local Memorandum of Understanding in order to avoid payment of penalty overtime.

The parties further agree to remedy past and future violations of the above understanding as follows:

1. Full-time employees and part-time regular employees who file a timely grievance because they were improperly assigned to work their holiday or designated holiday will be compensated at an additional premium of 50 percent of the base hourly straight time rate.

2. For each full-time employee or part-time regular employee improperly assigned to work a holiday or designated holiday, the Employer will compensate the employee who should have worked but was not permitted to do so, pursuant to the provisions of Article 11, Section 6, or pursuant to a Local Memorandum of Understanding, at the rate of pay the employee would have earned had he or she worked on that holiday.

The above settles the holiday remedy question which was remanded to the parties by Arbitrator Mittenthal in his January 19, 1987 decision in B4N-NA-C 21 and B4N-NA-C 24.

William J. Downes
Director, Office of
Contract Administration
Labor Relations Department

DATE 10/19/88

Thomas A. Neill
Industrial Relations Director
American Postal Workers
Union, AFL-CIO

DATE 10/19/88

Lawrence G. Butchins
Vice President
National Association of
Letter Carriers, AFL-CIO

DATE 10/19/88

O'Donnell, Schwartz & Anderson
Counselors at Law
1300 L Street, N.W., Suite 200
Washington, D.C. 20005
(202) 898-1707
FAX (202) 682-9276

ASHER W. SCHWARTZ
DARRYL J. ANDERSON
MARTIN R. GANZGLASS
LEE W. JACKSON*
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ANTON G. HAJJAR**
SUSAN L. CATLER
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*PA. AND MS. BARS
**ALSO MD. BAR
***WISC. BAR ONLY

JOHN F. O'DONNELL
(1907-1993)

60 East 42nd Street
Suite 1022
New York, N.Y. 10165
(212) 370-5100

M E M O R A N D U M

TO: Moe Biller
Bill Burrus
Tom Neill

FROM: Anton Hajjar

DATE: June 7, 1993

RE: Green v. USPS (MSPB June 3, 1993)

We recently won a significant handicap discrimination case before the MSPB, which held that preference eligible postal employees need not mitigate damages by seeking interim employment during the period of time that their appeals are pending. APWU member Larry Green stands to gain over 3 1/2 years of back pay (plus all his accrued annual leave), with interest -- likely to exceed $100,000. The MSPB noted that the same rule applies to any postal employee with a meritorious EEO complaint, because the EEOC's regulations make the Back Pay Act applicable to postal EEO complaints. Myron Feine v. USPS, EEOC Dec. 04920009 (9/30/92) (cited in the Green decision at footnote 5).

The MSPB ruled that preference eligible employees are covered by the Back Pay Act by virtue of the Veteran's Preference Act, notwithstanding the fact that the Postal Reorganization Act exempts the USPS from the Back Pay Act. Therefore, ELM Section 436.22, requiring mitigation and reports of efforts to find outside employment, are irrelevant in MSPB cases (and EEOC cases) involving postal workers.[1]

The facts of this case disclose exceptional callousness on the part of the USPS, and strong, continuous support for his cause by the APWU. Green, an FSM clerk, suffered from a disabling knee condition, and was on light duty. The USPS wanted to fill the FSM slot he encumbered, and ordered him to undergo a fitness for duty

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[1] It is my understanding from Tom Neill that the same result may apply prospectively as a consequence of a recent settlement of a grievance challenging this ELM provision under Article 19.

examination, which, of course, he failed. Contending that "permanent" light duty was not available to him, the USPS removed him on June 8, 1987 -- almost exactly 6 years from the date of this latest decision. Green filed an EEO complaint and a grievance. Ultimately an arbitrator upheld his termination. Because of a peculiarity in the EEOC's regulations, he was forced to file an appeal with the MSPB in order to obtain a hearing.

On October 4, 1988, an Administrative Judge denied his appeal, deferring to the arbitrator's award. Green appealed, and on April 26, 1991 -- almost 4 years after his removal -- the MSPB ruled in his favor, holding that it was improper to defer to the arbitrator's award, and finding that the USPS failed to reasonably accommodate his handicap. The USPS reinstated Green, but denied him all but about 2 weeks of back pay. He was unemployable in the Oklahoma City labor market, according to the Veteran's Administration, which placed him in a rehabilitation training program. By this time, Green had undergone successful knee replacement surgery, and on the advice of the Union, continued to apply for reinstatement or reemployment in any position in the USPS. The USPS denied all these requests, specifically citing the fact that his appeal from his initial removal was still pending. Green then filed a petition for enforcement. It took the MSPB almost 2 more years to decide this aspect of the case, including another round of hearings and briefs before an AJ (which Green won), and a USPS appeal to the MSPB.[2]

NBA Tom Maier, and the Oklahoma City Area Local, have been particularly supportive in representing Brother Green. When he finally gets his check, it may be worth a picture and a story about his (and the Union's) long fight for justice.

A copy of the decision is annexed.

cc: Firm

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[2] Because this is a "mixed case" appeal, there is the remote possibility that the USPS can appeal again, but the procedures for doing so are cumbersome. I do not thing the USPS will appeal further.

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

LARRY GREEN, Appellant, v. UNITED STATES POSTAL SERVICE, Agency.	DOCKET NUMBER DA0752880424X1[1] DATE: JUN 3 1993

Anton G. Hajjar, Esquire, Washington, D.C, for the appellant.

O. D. Curry, Oklahoma City, Oklahoma, for the agency.

BEFORE

Daniel R. Levinson, Chairman
Antonio C. Amador, Vice Chairman
Jessica L. Parks, Member

OPINION AND ORDER

This case is before the Board on a petition for enforcement of the April 26, 1991, final decision of the Board canceling the appellant's removal, ordering his reinstatement and directing the agency to issue to the appellant a check for back pay, interest on back pay and other benefits. *Green v. United States Postal Service*, 47

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[1] The docket number below was DA0752880424C1.

M.S.P.R. 661 (1991). For the reasons set forth below, the Board finds that the agency has NOT COMPLIED with its final decision.

BACKGROUND

The appellant was removed by the United States Postal Service (agency), effective June 8, 1987, from the position that he encumbered. He grieved the removal and filed an Equal Employment Opportunity (EEO) complaint with the agency contending that he had been subjected to discrimination on the basis of handicap. In the final decision on the EEO complaint, the agency found, inter alia, that with or without accommodation, the appellant could not perform the duties of the position. On May 31, 1988, he filed an appeal with the Board. In an initial decision that was issued on October 4, 1988, the administrative judge affirmed the agency's decision to remove the appellant. The full Board reversed the initial decision finding that the agency had discriminated against the appellant on the basis of handicap when it removed him for failure to meet the physical requirements of his position and failed to show that the accommodation the appellant was seeking was unreasonable and would impose undue hardship on the agency's operation. *Green v. United States Postal Service*, 47 M.S.P.R. at 669.

The appellant filed a petition for enforcement contending that the agency had failed to comply with the Board decision on the issue of back pay. The appellant contended that the agency did not award him back pay from

October 28, 1987, to May 23, 1991, the day that he returned to work. The agency contended that under its regulations it was not required to award back pay because the appellant had failed to make a reasonable effort to secure other employment and mitigate the amount of the back pay award. The appellant contended that, because the case involved a discrimination issue, EEOC regulations applied and there was no duty to mitigate the back pay award.

In a Recommendation that was issued on December 6, 1991, the administrative judge concluded that Postal Service regulations applied. He found that by seeking outside employment between June and October 1987, obtaining assistance from the Department of Veterans Affairs (VA), embarking on a VA-structured retraining program, and periodically seeking from the agency reinstatement to any position for which he was qualified, the appellant had made a reasonable effort to obtain employment, thereby mitigating the back pay award. The administrative judge also found that the agency did not follow its own regulations because it did not consider the job market and the unemployment rate in the local commuting area in determining whether the appellant had made a reasonable effort to secure outside employment. He recommended that the agency be found in noncompliance.

The agency has filed a response in opposition to the Recommendation contending that the appellant has not met his duty to mitigate the back pay award and that the

administrative judge erred in finding that the agency had a duty to analyze the job market if the appellant failed to apply to any other agency.[2] Compliance file, vol. 2, tab 1. The appellant argues that the administrative judge was correct in finding that his efforts were sufficient to mitigate the back pay award.[3] Compliance file, vol. 2, tab. 2.

ANALYSIS

The Board is required, when it corrects a wrongful personnel action, to ensure that the employee is returned, as nearly as possible, to the *status quo ante*. *Kerr v. National Endowment for the Arts*, 726 F.2d 730, 733 (Fed. Cir. 1984). The Federal Circuit in *Kerr* referred to *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418-419, (1975), where the Supreme Court stated that legal remedies should place the injured party as nearly as possible in the

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[2] The agency also argues that the appellant did not exhaust the job market between June and October 1987, as the administrative judge had stated in the Recommendation. Because the agency has awarded the appellant back pay for this period and the parties have stipulated that back pay for this period is not an issue, the matter will not be addressed.

[3] The appellant argues that the agency, by not reinstating him while the removal action was still pending before the Board, was guilty of noncompliance, continuing discrimination and reprisal for the exercise of appeal rights. The initial decision affirmed the agency action and, while the matter was pending before the Board, the agency had no duty to reinstate the appellant. Reinstatement was not ordered until the Board issued its final decision. Therefore, there was no Board order requiring compliance.

situation that he or she would have occupied if the wrong had not been committed. *Kerr*, 726 F.2d at 733 n.3.

This obligation includes the enforcement of payment of back pay awards. *Spezzaferro v. Federal Aviation Administration*, 24 M.S.P.R. 25 (1984). Back pay awards to preference eligible employees of the Postal Service are governed by the Back Pay Act. *Andress v. United States Postal Service*, MSPB Docket No. CH0752890302X1 (March 10, 1993), *overruling Frazier v. United States Postal Service*, 26 M.S.P.R. 584 (1985), and its progeny to the extent that these decisions hold that the Back Pay Act is inapplicable to preference eligible employees of the Postal Service.

The agency contends that the appellant has not met his duty to mitigate the back pay award by seeking outside employment from October 28, 1987, to May 23, 1991. In support of this contention, the agency offers part 436.22 (dated May 1, 1989)[4] of its Employee and Labor Relations Manual (ELM), which states that "back pay is allowed ... provided the person has made reasonable efforts to obtain other employment." Compliance File, tab 13. The agency also refers to Management Instruction EL-430-90-8 dated July 2, 1990, interpreting the regulation which states that employees "are responsible for mitigating damages during the

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[4] Although the back pay period in question includes the period from October 28, 1987 to May 23, 1991, the agency has not offered the regulation that was in effect prior to May 1, 1989.

period necessary to adjudicate any appeal filed." Compliance File, vol. 1, tab 4, subtab 5, page 2.

The ELM, however, is not dispositive of this case. Preference eligibles in the Postal Service are entitled to the same rights guaranteed to preference eligibles in the competitive service. 39 U.S.C. § 1005(a)(2). The Postal Service cannot by regulation alter the rules developed by construction of the Back Pay Act. *Andress v. United States Postal Service*, slip op. at 11. Part 436 of the ELM cannot be applied to wrongfully removed preference eligibles to require them to seek replacement employment while pursuing their appeals to the Board. To do so would deprive preference eligibles in the Postal Service of the rights guaranteed them under the Veterans' Preference Act of 1944, 58 Stat. 387, 390. *Id.* at 10. This was not the intention of the Postal Reorganization Act, 39 U.S.C. § 1005(a)(2). *Id.*

In *Andress*, the Board discussed the rule enunciated in *Schwartz v. United States*, 149 Ct. Cl. 145, 147 (1960), and followed in subsequent cases that an employee has reasonable grounds for not making an effort to secure other employment while seeking administrative relief, and the duty to mitigate does not arise until a final administrative decision is issued. The ELM provision at issue in *Andress* is the same one relied on by the agency in this case. Accordingly, the reasoning used in *Andress* applies to the appellant in this case. The appellant, who is a preference

eligible, was not required to seek other employment while pursuing his administrative appeal. Accordingly, the appellant's back pay award should not be diminished on the basis of an alleged failure to seek outside employment. Therefore, the appellant is entitled to back pay for the entire period from October 28, 1987, to May 23, 1991. (The record reflects that the appellant requested that annual leave be substituted for the period from February 9, 1989, to May 10, 1989. Compliance File, vol.1, tab 4, subtab 2.)

The appellant argues that the interest on the back pay award should be calculated by the method used by the National Labor Relations Board. The Back Pay Act, however, governs back pay matters when a preference eligible prevails against the Postal Service. *Andress v. United States Postal Service*, slip op at 10-11.[5] Under the Back Pay Act, the appellant is entitled to interest. *See* 5 U.S.C. § 5596(b)(2)(A), (C); *Davis v. United States Postal Service*, MSPB Docket No. DA0752880436X1 (April 19, 1993). Accordingly, the agency must pay the appellant interest calculated under the Back Pay Act.

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[5] It is noteworthy that the Equal Employment Opportunity Commission (EEOC) has also recently rejected the agency's calculation of back pay in accordance with ELM 436.63, and ordered the agency to follow 5 C.F.R. § 550.805, "which sets forth a method of backpay computation under the Back Pay Act." *Myron Fiene v. United States Postal Service*, EEOC Decision 04920009 (9/30/92). The EEOC additionally ordered the agency to calculate the interest on the back pay award pursuant to the method delineated in 5 C.F.R. § 550.806 (which was drafted to "carry out" the provisions of the Back Pay Act.)

The appellant states that no mention of an award of attorney fees has been made for seeking compliance. The appellant is advised that he must file a request for attorney fees in compliance matters as he did with the removal action. See 5 C.F.R. § 1201.37.

Because we have found that the appellant had no duty to mitigate the back pay award and, therefore, the regulation is not applicable to him, we make no findings on the allegation that the agency failed to follow the regulation and consider the job market and the unemployment rate in the local commuting area in determining whether the appellant had made reasonable efforts to seek other employment.

ORDER

The agency is ORDERED to issue the appellant a check for the appropriate amount of back pay, overtime pay, interest and benefits, and no deduction may be made based on the appellant's alleged failure to seek outside employment. The agency is ORDERED to restore to the appellant all of the leave that he would have accrued but for the agency action. This restoration may be done by a lump sum payment or annual leave credit. The agency is further ORDERED to submit to the Clerk of the Board within 20 days of the date of this Order satisfactory evidence of compliance with the Board's decision. That evidence must consist of full documentation of how the agency arrived at the back pay amount.

The agency has identified C. E. Pitts, Director of Human Resources, and O. D. Curry, Labor Relations Assistant,

at Post Office Box 25998, Oklahoma City, Oklahoma 73125-9401, as the persons who are responsible for ensuring compliance. If this information is no longer correct, the agency is ORDERED to identify the individual(s) who is (are) responsible for ensuring compliance and file the name, title and mailing address of the person(s) with the Clerk of the Board within five days of the date of this Order. This information must be submitted even if the agency believes that it has fully complied with the Board's order. If the agency has not fully complied, it must show cause why sanctions, pursuant to 5 U.S.C. § 1204(a) and (e)(2)(A) (Supp. III 1991)[6] and 5 C.F.R. § 1201.183, should not be imposed against the individual(s) responsible for the agency's continued noncompliance.

NOTICE TO THE APPELLANT

You may respond to the agency's evidence of compliance within 15 days of the date of service of that evidence. If

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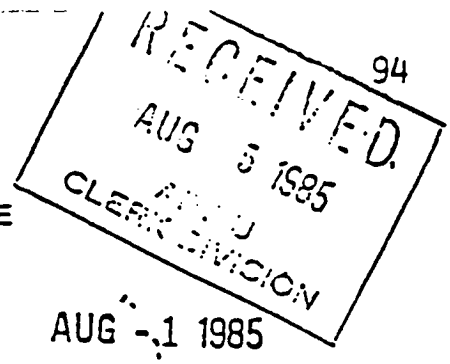
[6] Section 1204(a) provides that the Board may order a federal employee to comply with its orders and enforce compliance. Section 1204(e)(2)(A) provides that the Board may order that an employee "shall not be entitled to receive payment for service as an employee during any period that the order has not been complied with." The procedures for implementing these provisions are set out at 5 C.F.R. § 1201.183.

you do not respond, the Board will assume that you are satisfied and will dismiss the petition for enforcement as moot.

FOR THE BOARD:

Robert E. Taylor
Clerk of the Board

Washington, D.C.



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UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260-0001

AUG -1 1985

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, NW
Washington, D.C. 20005-3399

Re: R. Sharp
Little Rock, AR 72201
H1C-3F-C 43497

Dear Mr. Connors:

On June 27, 1985, and again on July 18, 1985, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management violated the National Agreement by denying the grievant additional time to process grievances when overtime was called.

During our discussion, we mutually agreed to settle this case based upon the following understanding:

1. Requests for additional time to process grievances should be dealt with on an individual basis and shall not be unreasonably denied.

2. Management will not delay a union steward time to perform union duties based solely on the fact that the employee is in an overtime status.

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

Time limits were extended by mutual consent.

Sincerely,

Muriel Aikens
Labor Relations Department

James Connors
Assistant Director
Clerk Craft Division
American Postal Workers Union,
AFL-CIO

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

May 25, 1995

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Mr. Burrus:

This is in reference to your correspondence of February 23, regarding interest payments on back pay awards, wherein you state that, " . . . the Data Center is computing the interest from the date of improper withholding to the date of the agreement/decision." According to the Accounting Service Center in Minneapolis, interest is paid up to the time of payment. Further, each employee gets a worksheet which details how interest is computed.

I hope this satisfactorily addresses your concerns regarding interest on back pay.

If you have any questions concerning this matter, please contact Donna Gill of my staff at 268-2373.

Sincerely,

for Anthony J. Vegliante
Manager
Contract Administration (APWU/NPMHU)

MAY 1995
Received
Office of The
Executive
Vice President

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Moe Biller, President
(202) 842-4246

February 23, 1995

Dear Mr. Vegliante:

I am informed that the Postal Data Center has unilaterally implemented a policy of compensating employee(s) interest on monies improperly denied. When interest is awarded through agreement or decision, the Data Center is computing the interest from the date of improper withholding to the date of the agreement/decision. This policy does not account for the normal lengthy delay from agreement/decision until actual payment and denies the employee(s) full benefit of the decision, eliminating full reimbursement as per the agreement.

It is the position of the union that agreements/decisions providing interest on improperly withheld monies, unless specifically limited, apply to the entire period that the affected employee(s) are denied access to the funds.

Please review and advise of the employer's interpretation.

Sincerely,

William Burrus
Executive Vice President

Anthony J. Vegliante, Manager
Grievance & Arbitration Division
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

July 1, 1988

Mr. Moe Biller
President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4107

Dear Moe:

This is in further response to your letter of April 5 regarding whether a dispute exists over the interpretation of Article 8, Section 8.B.

It is the interpretation of the American Postal Workers Union, AFL-CIO (APWU) that once an employee is scheduled for duty on a nonscheduled day and that employee reports late, the employee is entitled to work the remainder of his or her 8-hour guarantee period. The APWU also states that such an interpretation would be consistent with the practice on a regular scheduled day as defined in Article 8, Section 2.

While your letter stated that certain practices exist with respect to Article 8, Section 8.B, your letter did not provide the specific facts necessary to conduct an investigation.

However, as a general policy matter, an employee who is called in on his or her nonscheduled day has the same reporting obligations as an employee on a regularly scheduled day. The guaranteed time under Article 8, Section 8.B, would come into effect after the employee has reported as scheduled.

As outlined in the Employee and Labor Relations Manual (ELM), Section 432.61, guaranteed time is paid time not worked under the guarantee provision of the collective-bargaining

agreements for periods when an employee has been released by the supervisor and has clocked out prior to the end of a guaranteed period (emphasis added). It applies only in an overtime situation, with the exception being for employees in the Letter Carrier Craft.

It must be noted, however, that there are conditions under which an employee will not be compensated after he reports as scheduled. Section 432.63 of the ELM states this would occur when an employee requests to leave the postal premises because of illness or for personal reasons. Moreover, an employee will not be compensated when that employee leaves without proper authorization.

The same general principle that applies to the end of an employee's tour of duty also applies to the beginning of his or her tour of duty, that is an employee may create a situation which negates the application of the call-in guarantee.

The guarantees of Article 8, Section 8, are predicated on the employee reporting to work as scheduled. The reporting requirements as outlined in the Time and Attendance Handbook, F-21, Section 142, are not changed because it is an overtime situation. If an employee has an unscheduled tardiness or does not call in or has not been properly excused by management, the employee is considered absent without leave (AWOL), pending receipt of the facts of the case. This policy is clearly stated in Handbook F-21, Sections 142 and 393.

Therefore, when an employee is scheduled for overtime on his/her nonscheduled day and does not report as scheduled because of tardiness, and has not been properly excused according to our policies, the employee is not entitled to work the remainder of the 8-hour guarantee as scheduled. Since unscheduled tardiness creates operational uncertainty, it would simply be inefficient for management to allow an employee to report tardy, through no fault of management, and be entitled to work the remainder of his tour when, out of necessity, his supervisor may have had to replace that employee with another employee.

While the foregoing outlines our general policy, each incident must be weighed on the facts and circumstances involved. In some situations, an employee may report tardy and work the remainder of the tour. However, that would be a management decision based upon the circumstances involved and not an entitlement under the guarantees of Article 8, Section 8.B.

Should there be any questions regarding this matter, please contact William Scott at 268-3843.

Sincerely,

Joe Mahon

Joseph J. Mahon, Jr.
Assistant Postmaster General

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Moe Biller, President
(202) 842-4246

April 5, 1988

Mr. Joseph J. Mahon, Jr.
Assistant Postmaster General
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, SW
Washington, D. C. 20260

Dear Mr. Mahon:

I am writing in accordance with Article 15, Section 3 to determine if a dispute exists over the interpretation of Article 8, Section 8.B.

It is the APWU interpretation that once an employee is scheduled to report for duty on a non-scheduled day and the employee reports late, or tardy, the employee is entitled to work the remainder of the 8-hour guarantee as scheduled. This would be consistent with the practice on a regular scheduled day as defined in Article 8, Section 2. It appears that some offices are taking the position that if an employee is tardy managers have the option of not utilizing the employee for the scheduled overtime.

If the Postal Service interpretation is different or you have any questions, please contact Mr. Tom Neill of my staff at 842-4273.

Sincerely,

Moe Biller
President

MB:kj
opeiu #2
afl-cio

American Postal Workers Union, AFL-CIO

817 Fourteenth Street, N.W., Washington, D.C. 20005 • (202) 842-4246

WILLIAM BURRUS
Executive Vice President

May 16, 1985

Dear Mr. Henry:

This is in regard to the grievance settlement of April 17, 1985 between the Postal Service and NALC resolving the dispute of temporary vacancy schedules. The American Postal Workers Union is not a party to the settlement and this correspondence serves as notice that we believe it to be in violation of the clear language of the contract and prior arbitration awards. The APWU insists that this settlement not be cited to prejudice the union's position in future disputes.

Sincerely,

William Burrus,
Executive Vice President

Bill Henry
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

WB:mc

LR320:FMDyer:jda:4132:04/11/85
bcc: Mr. Fritsch--RF
Mr. Henry
Ms. Barber
Mr. McDougald
Mr. Dyer
Ms. Webb
Reg. GMs, LRD
File: Subject
Reading
(14.HlN-1J-C 67∅6)

Mr. Francis J. Conners
Vice President
National Association of
Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001-2197

Dear Mr. Conners:

Recently you and Dave Noble met with George McDougald and myself in prearbitration discussion of H1N-1J-C 67∅6, Torrington, Connecticut. The question in this grievance is whether management restricted the bidding for a temporary vacant VCMA position to employees with the same schedule as the position.

It was mutually agreed to full settlement of this case as follows:

1. Where temporary bargaining-unit vacancies are posted, employees requesting these details assume the hours and days off without the Postal Service incurring any out-of-schedule liability.

2. The bargaining-unit vacancies will not be restricted to employees with the same schedule as the vacant position.

Please sign and return the enclosed copy of this letter acknowledging your agreement to settle this case, withdrawing H1N-1J-C 67∅6 from the pending national arbitration listing.

Sincerely,

(signed)

William E. Henry, Jr.
Director
Office of Grievance and
Arbitration
Labor Relations Department

APR 17 1985

(signed)

Francis J. Conners
Vice President
National Association of
Letter Carriers, AFL-CIO

(Date)

Enclosure

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

ARTICLE 8
SECTION 4 B
SUBJECT
204 B O.T

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

JUN 07 1985

Re: Class Action
Kankakee, IL 60901
H1C-4A-C 32956

Dear Mr. Connors:

On May 9, 1985, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure set forth in the 1981 National Agreement.

The question raised in this grievance is whether management improperly scheduled B. LeClaire for craft overtime on June 17, 1984.

After further review of this matter, we mutually agreed that no national interpretive issue is fairly presented in the particulars evidenced in this case. Whether or not management improperly scheduled B. LeClaire for craft overtime on June 17, 1984, can be determined by applying the prearbitration settlement in case H1C-5G-C 5929, Visalia, California to the circumstances involved in this grievance. Specifically, the parties at this level agree that:

1. An acting supervisor (204-B) will not be utilized in lieu of a bargaining-unit employee for the purpose of bargaining unit overtime.

2. The PS Form 1723 shall determine the time and date an employee begins and ends the detail.

3. An employee detailed to an acting supervisory position will not perform bargaining-unit overtime immediately prior to or immediately after such detail unless all available bargaining-unit employees are utilized.

4. Due to the various situations that could occur, each set of fact circumstances will be determined on a case-by-case basis.

5. Therefore, this case is remanded to the region for determination and compensation of the by-passed employee, if appropriate.

Accordingly, as we further agreed, this case is hereby remanded to the parties at Step 3 for further processing if necessary.

Please sign and return a copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

Leslie Bayliss
Labor Relations Department

James Connors
Assistant Director
Clerk Craft Division
American Postal Workers Union,
AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. Richard I. Wevodau
Director
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

MAY 15 1985

Re: APWU Local
Des Moines, IA 50318
H1C-4K-C 36493

Dear Mr. Wevodau:

On May 2, 1985, we met to discuss the above-captioned case at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether an employee who had been on a 204b assignment was improperly assigned to work overtime.

After further review of this matter, we mutually agreed that there was no national interpretive issue fairly presented in this case. This is a local dispute suitable for regional determination by application of the provisions of the Step 4 settlement reached on grievance no. H1C-5G-C 5929 dated March 2, 1983. In pertinent part, that settlement provides that an employee detailed to an acting supervisory position will not perform bargaining-unit overtime immediately prior to or immediately after such detail unless all available bargaining-unit employees are utilized.

Accordingly, as we further agreed, this case is hereby remanded to Step 3 for further consideration by the parties based on a review of the provisions of the above-referenced settlement.

Please sign and return the enclosed copy of this decision as acknowledgment of our agreement to remand this grievance.

Sincerely,

Margaret H. Oliver
Labor Relations Department

Richard I. Wevodau
Director
Maintenance Craft Division
American Postal Workers Union,
AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

SEP 5 1986

Mr. Richard I. Wevodau
Director
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: E. Flores
El Paso, TX 79910
H4C-3A-C 18463

Dear Mr. Wevodau:

On July 24, 1986, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether rights of the grievant were violated when an employee on a 204B detail worked overtime.

During our discussion, we mutually agreed as follows:

1. An acting supervisor (204-B) will not be utilized in lieu of a bargaining-unit employee for the purpose of bargaining-unit overtime.

2. The PS Form 1723 shall determine the time and date an employee begins and ends the detail.

3. An employee detailed to an acting supervisory position will not perform bargaining-unit overtime immediately prior to or immediately after such detail unless all available bargaining-unit employees are utilized.

4. Due to the various situations that could occur, each set of fact circumstances will be determined on a case-by-case basis.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case for application of the above to the facts involved.

Time limits were extended by mutual consent.

Sincerely,

Margaret H. Oliver
Labor Relations Department

Richard I. Wevodau
Director
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

MAR 02 1983

ARTICLE 8
SECTION 5
SUBJECT
204 B
BASE UNIT O.T.

RECEIVED IN THE OFFICE OF
MAR 3 1983
JAMES I. ADAMS

Mr. James I. Adams
Assistant Director
Maintenance Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Adams:

On February 8 you met with Frank Dyer in pre-arbitration discussion of H1C-5G-C 5929, Visalia, California. The question in this grievance is whether management properly utilized an acting supervisor in a clerk craft overtime assignment.

It was mutually agreed to full settlement of this case as follows:

1. An acting supervisor (204-B) will not be utilized in lieu of a bargaining-unit employee for the purpose of bargaining-unit overtime.

2. The PS Form 1723 shall determine the time and date an employee begins and ends the detail.

3. An employee detailed to an acting supervisory position will not perform bargaining-unit overtime immediately prior to or immediately after such detail unless all available bargaining-unit employees are utilized.

4. Due to the various situations that could occur, each set of fact circumstances will be determined on a case-by-case basis.

5. Therefore, this case is remanded to the region for determination and compensation of the by-passed employee.

Please sign the attached copy of this letter acknowledging your agreement with this settlement, withdrawing H1C-5G-C 5929 from the pending national arbitration listing.

Sincerely,

Bruce D. Evans
Acting Director
Office of Grievance and Arbitration
Labor Relations Department

James I. Adams
Assistant Director
Maintenance Division
American Postal Workers Union, AFL-CIO

3/4/83
Date

Enclosure

SEP 12 1975

Art 16
Sec. 5

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

September 11, 1975

UNION EXHIBIT # 6

Mr. Emmet Andrews
Director of Industrial Relations
American Postal Workers Union, AFL-CIO
817 - 14th Street, NW
Washington, DC 20005

Dear Mr. Andrews:

The following disposition of pending national grievance AB-NAT-8021 is agreed to by the American Postal Workers Union and the United States Postal Service regarding Article VIII, section 5(f):

> Except in December or in an emergency, a full-time regular employee whose name is on the Overtime Desired List shall not be required to work over 10 hours in a day or more than 6 days in a week. However, any full-time regular employee (selected to work overtime pursuant to Article VIII, Section 5 (C-D) may request to work beyond the tenth hour or more than 6 days in a week. It will not be a violation of the National Agreement if management grants such requests.

Please sign the attached copy to acknowledge the agreed to settlement.

James G. Merrill
General Manager
Grievance Division
Labor Relations Department

Emmet Andrews
Director of Industrial Relations
American Postal Workers Union, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

August 27, 1981

Mr. William Burrus
General Executive Vice President
American Postal Workers Union,
AFL-CIO
817 14th Street, NW
Washington, DC 20005

Re: Article VIII, Section 4.F.

This is in response to your request for clarification of the recently negotiated contract provision dealing with the restriction that employees may not be required to work more than five consecutive days of overtime in a week.

Please be advised it is the position of the Postal Service that the beginning or conclusion of an employee's workweek will not be used as an artificial barrier to require an employee to work overtime beyond the five consecutive day limitation.

Our field managers will be advised of this interpretation.

Sincerely,

Thomas J. Fritsch
General Manager
Grievance Division
Office of Grievance and
Arbitration
Labor Relations Department

Subject, Chron, Reading, Art. File, Lerch
LR310:MKOliver:htay25:7/2/85

JUL - 3 1985

Mr. Richard I. Nevedau
Director
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: Class Action
Bayville, NY 11782
NIC-1M-C 61385

Dear Mr. Nevedau:

On June 26, 1985, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether local management violated Article 8 when an employee on limited duty was permitted to work overtime.

It is the position of the Postal Service that when full-time regular employees are selected to work overtime under the terms set forth in Article 8.5.C., those employees on light duty are passed over.

It is also the position of the Postal Service that when full-time regular employees are selected for overtime under the provisions of Article 8.5.B., those in a light or limited duty status may be selected if work is available within their prescribed medical restrictions.

According to information in the grievance file, the employee in this case was in a limited duty status. Under the circumstances, we find no contractual violation and the grievance is denied.

Sincerely,
(Original signed)

Margaret M. Oliver
Labor Relations Department

Post-it® Fax Note 7671	Date 6-28	# of pages ▶ 1
To Bill Burrus	From Anthony Vegliante	
Co./Dept.	Co.	
Phone #	Phone # 268-3821	
Fax # 842-4897	Fax # 268-6946	

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. Richard I. Wevodau
Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Wevodau:

Recently you met with Frank Dyer in prearbitration discussion of H1C-5E-C 11795, Honolulu, Hawaii. The question in this grievance is whether an employee on the overtime desired list may be required to work overtime on more than 5 consecutive days.

It was mutually agreed to full settlement as follows:

> Except in December or in an emergency, a full-time regular employee, whose name is on the overtime desired list, shall not be required to involuntarily work over 10 hours in a day, more than 6 days in a week, or work overtime on more than 5 consecutive days in a week. However, any full-time regular employee selected to work overtime pursuant to Article VIII, Section 5 (C-D), may volunteer to work beyond the 10th hour, or more than 5 consecutive days in a week, including the employee's 6th and/or 7th day. It will not be a violation of the National Agreement if management grants such a request.

Please sign and return the enclosed copy of this letter acknowledging your agreement with this settlement, withdrawing H1C-5E-C 11795 from the pending national arbitration listing.

Sincerely,

W. E. Henry
William E. Henry
Director
Office of Grievance and Arbitration
Labor Relations Department

Richard I. Wevodau
Richard I. Wevodau
Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

4/19/84
Date

Enclosure

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

1978 AGREEMENT
ARTICLE 8 SECTION 5A
SUBJECT 204B O.T.

APWU NAT =

January 22, 1982

Mr. Kenneth D. Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union, AFL-CIO
817 - 14th Street, NW
Washington, DC 20005

A8E2098

Re: Bert
Pittsburgh, PA (BMC) 15090
H8C-2F-C-10327

Dear Mr. Wilson:

On July 7, 1981, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

The question in this grievance is whether or not management violates Article VIII of the National Agreement when an employee who has worked an eight (8) hour tour of duty as a 204B, is allowed to work overtime as a craft employee at the end of that tour of duty.

It is the position of the Postal Service that higher level assignments are to be made in accord with Article XXV. The employee is to be given a written management order, stating beginning and approximate termination, and directing the employee to perform the duties of the higher level position.

In this case, the employee was provided an assignment order (Form 1723) directing him to perform in a supervisory position from 0700, March 7, 1981, to 1530, March 20, 1981. We conclude in this case that this employee was in the supervisory status for all work time included. He should not work craft overtime during the period covered by the assignment order.

FEB 25 1982

We, therefore, mutually agree that if the higher level employee named by this grievance worked craft overtime on March 7, 1981, a determination shall be made by the parties at the local level as to how the Overtime Desired List was violated and if so, the appropriate employee to be compensated.

Time limits extended by mutual agreement.

Please sign the attached copy of this decision as your acknowledgment of agreement to resolve this case.

Sincerely,

Robert L. Eugene
Labor Relations Department

Kenneth D. Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union,
AFL-CIO

LABOR RELATIONS

UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4000

August 2, 1993

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

It has come to my attention that the precise wording of the parties' agreement concerning overtime for APWU transitional employees may be misleading as to the intent of the parties. Article 8.4.G of the Memorandum of Understanding on APWU Transitional Employees dated December 3, 1991, provides for overtime only "for work performed in excess of forty (40) work hours in any one service week." Although the parties have a history of using the phrase "work hours" to include paid hours, it was not the intent of the parties, as we discussed in negotiations concerning the Memorandum of Understanding, to grant transitional employees postal overtime.

Indeed, the provisions of Article 8.4 of the National Agreement relating to payment of postal overtime do not apply to APWU transitional employees. The obligation to pay overtime under Section 4.G when a transitional employee performs in excess of forty (40) work hours in a service week was intended to correspond to the employer's obligation to pay overtime pursuant to the Fair Labor Standards Act (FLSA). In this case, "work hours" means precisely that, and does not include paid non-work hours, such as leave hours, which are not counted as work hours under the FLSA. Thus, it was our intent in the first paragraph of Section 4.G to reiterate the employer's obligation to pay FLSA overtime.

Sincerely,

William J. Downes

William J. Downes
Manager
Contract Administration APWU/NPMHU
Labor Relations

4
AUG 1993

UNITED STATES POSTAL SERVICE

FACSIMILE COVER LETTER

PLEASE DELIVER THE FOLLOWING PAGES

TO: William Burrus
American Postal Workers' Union,
AFL-CIO
1300 L Street, NW
Washington,DC 20005-4128
(202) 842-4246
FAX: (202) 842-4297

FROM: Samuel M. Pulcrano
Manager, Contract Administration
USPS Headquarters
475 L'Enfant Plaza, SW
Washington, DC 20260-4125
(202) 268-3811
FAX: (202) 268-6946

DATE: DECEMBER 23, 1997
NUMBER OF PAGES (INCLUDING COVER): 2

COMMENTS: Holiday Paycheck Distribution (Pay period 26-97)

USPS FIN 23-9904
MINNEAPOLIS PDC
REPORT AAN800P1 SFX
B/A 1K MSC 966 SUB

DDE/DR BROADCAST MESSAGE

12/23/97 08:00 EDST

TO: DDE/DR FINANCE

* *
*
* PLEASE! GIVE A COPY OF THIS MESSAGE TO YOUR FINANCE OFFICE *
*
* *

SUBJECT: HOLIDAY PAYCHECK DISTRIBUTION (PAY PERIOD 26-97)

THE PAYDAY FOR PAY PERIOD 26-97 IS FRIDAY 12/26/97. IN THE SPIRIT OF THE SEASON, ALL AVAILABLE CHECKS AND EARNING STATEMENTS MAY BE GIVEN OUT TO EMPLOYEES AT THE CLOSE OF BUSINESS (AFTER 3:00PM) ON WEDNESDAY, DECEMBER 24.

PLEASE REMIND EMPLOYEES THAT CHECKS CANNOT BE CASHED UNTIL FRIDAY, DECEMBER 26.

PAYROLL ACCOUNTING/RECORDS WISHES YOU THE VERY BEST FOR THE HOLIDAYS AND THE NEW YEAR.

IF YOU HAVE ANY QUESTIONS REGARDING THE ABOVE,
PLEASE CALL MINNEAPOLIS ISC CUSTOMER SUPPORT AT 1-800-877-7435,
OPTION 1 -- OR - 612-725-1222.

ELIZABETH L. SMITH
MANAGER, PAYROLL ACCOUNTING/RECORDS
FINANCE
USPS-HEADQUARTERS

USPS FIN 08-9904
MINNEAPOLIS PDC
REPORT AAN800P1 SFX
B/A 1B MSC 962 SUB

Post-it® Fax Note 7671	Date 12-17-97	# of pages ▶
To Bill Burrus	From Steve Albanese	
Co./Dept.	Co.	
Phone #	Phone #	
Fax #	Fax # 978-777-7419	

11/25/97 15:00 EDST

TO: DDE/DR FINANCE

* PLEASE! GIVE A COPY OF THIS MESSAGE TO YOUR FINANCE OFFICE *

SUBJECT: HOLIDAY PAYCHECK DISTRIBUTION (REVISED)

THE PAYDAY FOR PAY PERIOD 24-97 IS FRIDAY, 11/28/97 AND THE PAYDAY FOR PAY PERIOD 26-97 IS FRIDAY 12/26/97.

THE PAYDAY FOR BOTH OF THESE PAY PERIODS FALLS ON THE DAY AFTER THE HOLIDAYS, THANKSGIVING AND CHRISTMAS RESPECTIVELY.

THE CHECKS AND EARNINGS STATEMENTS WHICH ARE NORMALLY DISTRIBUTED TO TOUR ONE AND TOUR THREE EMPLOYEES ON THURSDAY NIGHT AT THE END OF THEIR TOUR, MAY BE DISTRIBUTED ON WEDNESDAY NIGHT TO THESE EMPLOYEES AT THE >> END OF THEIR TOUR, << PROVIDED THE CHECKS ARE AVAILABLE AT THE EMPLOYEE'S PAY LOCATION.

THERE WILL BE NO OTHER EXCEPTIONS TO THE DISTRIBUTION OF THE PAYCHECKS FOR THESE HOLIDAYS.

IF YOU HAVE ANY QUESTIONS REGARDING VIEW DIRECT ACCESS TO REPORTS PLEASE CALL MINNEAPOLIS ISC CUSTOMER SUPPORT AT 1-800-877-7435, OPTION 1 -- OR - 612-725-1222.

ELIZABETH L. SMITH
MANAGER, PAYROLL ACCOUNTING/RECORDS
FINANCE
USPS-HEADQUARTERS

Bill - There is no provision for people who have pre-scheduled leave on Friday.

Steve Albanese

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

February 5, 1998

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Dear Mr. Burrus:

This letter is in further response to your January 6, 1998 correspondence and our teleconference with Ms. Cheryl Hubbard of Corporate Payroll/Accounting regarding what you termed "management instructions" (a copy of which you enclosed with your letter) for an adjustment process to determine employee eligibility for Penalty Pay.

As discussed, the Family Medical Leave Act (FMLA) required payroll to capture the family and medical leave absences. The hours codes developed for FMLA in the Electronic Time Clock (ETC) system is tied to hours codes already in the system today. As clearly stated during our teleconference, there is no change on how penalty overtime is calculated because of the addition of FMLA hours codes in ETC.

I hope this fully satisfies your inquiry. If you have any further questions, please do not hesitate to contact me at (202) 268-3811.

Sincerely,

Samuel M. Pulcrano
Manager
Contract Administration (APWU/NPMHU)

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

1984 NATIONAL AGREEMENTS
USPS - APWU/NALC
USPS - NPOMH
ARTICLE 8 BRIEFING INFORMATION

The following is a brief overview of the new Article 8 provisions involving Penalty Overtime Pay:

- The new provisons of Article 8, Hours of Work, of the 1984 National Agreements with the APWU/NALC and the Mailhandlers were effective 1/19/85.

- New language in Article 8, Section 4 provides for a new category of pay entitled Penalty Overtime Pay. Penalty Overtime Pay is paid at two times the base hourly straight time rate. Penalty overtime pay will not be paid for any hours worked in the month of December.

- For full-time employees, Penalty Overtime Pay is paid for all work in contravention of the restrictions identified in Article 8, Section 5.F. Article 8, Section 5.F provides that full-time employees may not be required to work:

  1. overtime on more than four of the employee's five regularly scheduled workdays.

  2. over 10 hours on a regularly scheduled workday.

  3. over 8 hours on a non-scheduled day.

  4. on more than 1 non-scheduled day.

- Violations of any of the above requires the payment of Penalty Overtime Pay; whether or not the employee volunteers or is required to work.

- Beginning the first full pay period after 9/1/85, excluding December, part-time employees will receive Penalty Overtime Pay for all work in excess of 10 hours in a service day or 56 hours in a service week.

- Article 8, Section 5.G provides that full-time employees not on the ODL may not be required to work overtime until all available employees on the list have worked up to 12 hours in a day or 60 hours in a week. Employees on the ODL may not work more than 12 hours in a day or 60 hours in a service week.

- In addition a related memorandum requires that ODLs are to be annotated to indicate those employees volunteering to work up to 12 hours on 4 of their 5 regularly scheduled workdays. The ODLs would then have 2 categories of volunteers:

1. volunteers who wish to work up to 12 hours per day and a maximum of 60 hours per week.

2. volunteers who wish to work up to 10 hours per day and a maximum of 56 hours per week.

Labor Relations Department
January 23, 1985

QUESTIONS AND ANSWERS

The following is a compilation of questions and answers concerning the application of the new provisions of Article 8, Sections 4 and 5.

1. Will penalty overtime be computed manually or by the PDCs?

   Answer:

   See Postal Bulletin 21495 dated January 14, 1985.

2. Is an employee entitled to penalty overtime pay even if that employee volunteers to work in excess of the restrictions identified in Article 8, Section 5.F?

   Answer:

   Yes, excluding December, any work in excess of those restrictions should be compensated at the penalty overtime pay rate; regardless of whether or not the employee volunteered. By signing the overtime desired list, an employee has indicated a willingness to work up to 12 hours in a day and 60 hours in a service week; the employee will receive penalty overtime pay for all hours which exceed the provisions of Article 8, Section 5.F.

3. Have there been any negotiated changes to the policies concerning providing overtime work to either part-time flexible employees or full-time employees?

   Answer:

   No.

4. Must all employees on the overtime desired list work 12 hours per day before an employee not on the list works any overtime?

   Answer:

   Not in all circumstances. All available employees on the overtime desired list must be required to work up to 12 hours per day and 60 per week prior to utilizing an employee not on the overtime desired list. "Available" is the key. For example, if it is not possible to complete the required work in the time available using only overtime desired list employees; then employees not on the list may be used.

5. Does an employee's non-scheduled day of overtime affect the number of days an employee is eligible to work overtime in a service week?

Answer:

No. An employee may work overtime on one non-scheduled day and 4 of the 5 scheduled days in a service week. These days may be consecutive calendar days.

6. May letter carriers not on the overtime desired list be required to work overtime on their own route?

Answer:

Yes. Seek to use auxiliary assistance first; but when such assistance is not available, use the non-overtime desired list carrier on his/her own route.

7. Can you require a full-time employee to work overtime on more than 4 of the employee's 5 scheduled days as long as you pay penalty overtime?

Answer:

Employees work as directed by management. Normally, the employee should not be required to work overtime on the fifth day, with the exception of December.

8. Can you require a full-time employee not on the overtime desired list to work over 10 hours per day?

Answer:

Employees work as directed by management. A full-time employee not on the overtime desired list should not be required to work over 10 hours per day, with the exception of December.

9. Can you require a full-time employee to work more than 8 hours on a non-scheduled day?

Answer:

Employees work as directed by management. With the exception of December, a full-time employee should not be required to work more than 8 hours on a non-scheduled day whether or not the employee is on the overtime desired list.

10. Is it permissable to require a full-time employee who has Friday and Saturday as non-scheduled days to work Sunday of week 1 through Thursday of week 2? *

Answer:

Yes, assuming appropriate application of the overtime desired list, because the employee would be working only one non-scheduled day in each of the service weeks.

11. Can we require those employees on the "10 hour" overtime desired list to work an 11th hour before going to those employees on the "12 hour" overtime desired list?

Answer:

That may be permissable, if no "12 hour" employees are available.

12. Article 8, Section 5.G provides that employees not on the overtime desired list may be required to work overtime only if all available employees on the overtime desired list have worked up to 12 hours in a day or 60 hours in a service week. Does this mean that the supervisor will maintain a continuous tally of overtime worked?

Answer:

Local records will need to be kept.

13. In the case of overtime requirements early in a service week, how would a supervisor know whether all overtime desired list employees would be utilized for 60 hours that week?

Answer:

Overtime would be scheduled that day based upon immediate needs.

14. Can an employee who is not on the overtime desired list voluntarily work overtime if an available employee on the overtime desired list has not been directed to work more than 10 hours?

Answer:

The available overtime desired list employee should be required to work; even though it may require the payment of penalty pay.

15. If an employee not on the overtime desired list works overtime, are you obligated to work all those on the list 12 hours?

Answer:

Not necessarily. Factors to consider would be the availability of those on the overtime desired list and the operational timeframe available in which to accomplish the work.

16. If it were necessary that all employees (overtime desired list and non-overtime desired list) work 2

hours overtime; must the overtime desired list employees be provided 2 additional hours of work?

Answer:

If there were no operational timeframes or constraints which had first required scheduling to include non-overtime desired list employees, then those available overtime desired list employees would be entitled to 2 additional hours of overtime work. *

17. Would it be considered a violation if an employee not on the overtime desired list were required to work overtime when those on the list have been scheduled to work 12 hours on a particular workday?

Answer:

No.

18. What is the preferred method to indicate those employees interested in working in excess of 10 hours in a day?

Answers:

The preferred method would be to annotate those employees' names on the overtime desired list by use of an asterisk.

19. In view of the provisions of the overtime memorandum, should an addendum to the present quarter's overtime desired list, i.e., that which is in effect on January 19, 1985, be posted for signing by employees who wish to work more than 10 hours a day?

Answer:

This should be discussed with the local union. Locally arrange an interim method to allow a brief period for redesignation by employees.

20. After exhausting the names of the employees on the overtime desired list desiring to work 12 hours, can those "10 hour employees" be forced to work 12?

Answer:

Yes; before using employees not on the overtime desired list.

21. Is an employee permitted to volunteer to work in excess of 12 hours per day?

Answer:

No, except in the month of December.

22. Is an employeee permitted to volunteer to work in excess of 60 hours in a service week?

Answer:

No, except in the month of December.

23. Is an employee permitted to volunteer to work the 7th day in a service week if the total hours for the week do not exceed 60 hours?

Answer:

No, except in the month of December.

24. Is an employee permitted to volunteer to work overtime on more than 4 of the 5 scheduled days?

Answer:

No, except in the month of December.

25. Can an employee work overtime on 5 or more consecutive days?

Answer:

Yes. For example, an employee could work overtime on 4 consecutive scheduled days and on one non-scheduled day.

26. When a full-time employee is called back to work does the penalty pay provision apply?

Answer:

Yes. Penalty Overtime Pay is paid whenever the total work and paid leave hours exceed 10 hours on a service day.

27. Must employees on the ODL be used for 4 hours of overtime on their scheduled workdays prior to using non-ODL employees for any overtime?

Answer:

Yes, unless there are no ODL employees available to work the needed overtime.

28. Does "Holiday Worked Pay" count towards the 56 and 60 hour limits?

Answer:

No. "Holiday Worked Pay" is a premium paid to eligible employees for hours worked on a holiday. However, since employees are given credit for paid leave hours for overtime calculations, "Holiday Leave Pay" does count towards the 56 and 60 hour limits.

29. If non-ODL employees are required to work overtime are they entitled to Penalty Overtime Pay for all overtime hours worked?

Answer:

No, they are only entitled to Penalty Overtime Pay if the hours worked are in contravention of the restrictions in Article 8, Section 5.F.

30. Article 8, Section 4.E states "...employees will receive penalty overtime pay for all work in excess of..." What is the intent of the word "work"?

Answer:

The term "work," as used in Section 4.E, means a combination of work hours and paid leave hours.

31. Does an employee, who studied a scheme off-the-clock and who became qualified and was placed into the duty assignment, retroactively receive Penalty Overtime Pay for those hours in contravention of the restrictions in Article 8, Section 5.F?

Answer:

Yes, if the hours spent studying were on or after January 19, 1985, for full-time employees, and after the September, 1985 implementation date for part-time employees.

32. Article 8, Sections 4.D and 4.E apply to full-time regular and part-time flexible employees. How are part-time regular employees handled?

Answer:

For Penalty Overtime Pay purposes, PTRs will be treated the same as part-time flexible employees, with the same effective date in September, 1985.

33. Although employees on the ODL are limited to no more than 12 hours work per day or 60 hours in a service week, how is payment made for work in excess of those limits?

Answer:

Penalty Overtime Pay rules will apply. However, no pyramiding of overtime rates will occur.

34. Article 8, Section 5 refers to "full-time employees" and "full-time regular employees", is there a difference for the application of the Penalty Overtime Pay provisions?

Answer:

No, the Penalty Overtime Pay provisions for full-time employees are applicable to full-time regular and full-time flexible schedule employees.

35. RE: Memorandum. What does the sentence, "In the event these principles are contravened, the appropriate correction shall not obligate the employer to any monetary obligation, but instead will be reflected in a correction to the opportunities available within the list," mean?

Answer:

Where we are not obligated to a monetary payment by the earlier Memorandums, which deal with the administration of the overtime desired lists; we are not further obligated by the 1984 Memorandum.

36. Is it permissible to exceed the 12 or 60 limits to complete a guarantee period?

Answer:

No, the employee should be considered unavailable. However, the employee should be allowed to fulfill a guarantee period if the employee is working.

37. If we must work a full-time employee, who already has worked 56 hours, on a non-scheduled can we work the employee 4 hours and pay 4 hours guarantee pay at the regular overtime rate?

Answer:

Yes, the employee is entitled to be paid as if the entire day was worked. Therefore, the last 4 hours would be Guarantee Overtime Pay.

38. Do paid leave hours for part-time employees count towards the 10 and 56 hour limits?

Answer:

Yes, this is the same as for full-time employees.

39. If an employee's non-scheduled day falls within the holiday schedule period, may that employee be scheduled for more than 8 hours on that non-scheduled day?

Answer:

No.

40. In excluding the month of December from the penalty overtime provisions, is it intended that the December time period be the same as under the previous Agreement?

Answer:

Yes.

41. Do employees from another schedule, working a temporary assignment in the PS schedule, become eligible for the penalty overtime provisions of the PS schedule?

Answer:

No. Employees temporarily assigned to the PS schedule carry with them the rules for the schedule from which assigned.

QUESTIONS AND ANSWERS
APRIL 25, 1985

The following is a compilation of questions and answers concerning the application of the new provisions of Article 8, Sections 4 and 5.

1. Will penalty overtime be computed manually or by the PDCs?

   Answer:

   Both. For timecards, penalty overtime will be computed manually and for PSDS offices, automatically through the automated system.

2. Have there been any negotiated changes to the policies concerning providing overtime work to either part-time flexible employees or full-time employees?

   Answer:

   No.

3. Must all employees on the overtime desired list (ODL) work 12 hours per day before an employee not on the list works any overtime?

   Answer:

   Not in all circumstances. All available employees on the ODL must be required to work up to 12 hours per day and 60 per week prior to utilizing an employee not on the ODL. "Available" is the key. For example, if it is not possible to complete the time critical work in the time available using only ODL employees; then employees not on the list may be used.

4. Can a full-time employee who has Friday and Saturday as nonscheduled days be required to work both nonscheduled days in the period between Sunday of week 1 through Thursday of week 2?

   Answer:

   Yes, assuming appropriate application of the ODL, because the employee would be working only 1 nonscheduled day in each of the service weeks.

5. Can an employee on the "10 hour" ODL be required to work an 11th hour before going to those

employees on the "12 hour" ODL?

Answer:

Yes, if no "12 hour" employees are available.

6. Article 8, Section 5.G, provides that employees not on the ODL may be required to work overtime only if all available employees on the ODL have worked up to 12 hours in a day or 60 hours in a service week. Does this mean that the supervisor will maintain a continuous tally of overtime worked?

Answer:

Local records will need to be kept.

7. In the case of overtime requirements early in a service week, how would a supervisor know whether all ODL employees would be utilized for 60 hours that week?

Answer:

Overtime is supposed to be scheduled that day based upon immediate needs.

8. Would it be considered a violation if an employee not on the ODL were required to work overtime when those on the list have been scheduled to work 12 hours on a particular workday?

Answer:

No.

9. How are those employees interested in working in excess of 10 hours in a day indicated?

Answer:

By noting those employees' names on the ODL with an asterisk.

10. After exhausting the names of the employees on the ODL desiring to work 12 hours, can those "10 hour employees" be forced to work 12?

Answer:

Yes; before using employees not on the ODL.

11. Can an employee work overtime on five or more consecutive days?

Answer:

Yes. For example, an employee could work overtime on four consecutive scheduled days and on one nonscheduled day.

12. When a full-time employee is called back to work does the penalty pay provision apply?

Answer:

Yes. Penalty overtime pay is paid whenever the total work and paid leave hours exceed 10 hours on a service day.

13. Must employees on the ODL be used for 4 hours of overtime on their scheduled workdays prior to using non-ODL employees for any overtime?

Answer:

Yes, unless there are no ODL employees available to work the needed overtime.

14. Does "Holiday Worked Pay" count towards the 56 and 60 hour limits?

Answer:

No. "Holiday Worked Pay" is a premium paid to eligible employees for hours worked on a holiday. However, since employees are given credit for paid leave hours for overtime calculations, "Holiday Leave Pay" does count towards the 56- and 60-hour limits.

15. If non-ODL employees are required to work overtime within the restrictions, are they entitled to penalty overtime pay for all overtime hours worked?

Answer:

No. They are only entitled to penalty overtime pay if the hours worked are in contravention of the restrictions in Article 8, Section 5.F.

16. Article 8, Section 4.E, states "...employees will receive penalty overtime pay for all work in excess of..." What is the intent of the word "work"?

Answer:

The term "work," as used in Section 4.E, means a combination of work hours and paid leave hours.

17. Does an employee, who studied a scheme off-the-clock and who became qualified and was placed into the duty assignment, retroactively receive penalty overtime pay for those hours in contravention of the restrictions in Article 8, Section 5.F?

Answer:

Yes, if the hours spent studying were on or after January 19, 1985, for full-time employees, and after the September, 1985 implementation date for part-time employees.

18. Article 8, Sections 4.D, and 4.E, apply to full-time regular and part-time flexible employees. How are part-time regular employees handled?

Answer:

For penalty overtime pay purposes, PTRs will be treated the same as part-time flexible employees, with the same effective date in September, 1985.

19. Although employees on the ODL are limited to no more than 12-hours work per day or 60 hours in a service week, how is payment made for work in contravention of those limits?

Answer:

Penalty overtime pay rules will apply. However, no pyramiding of overtime rates will occur.

20. Article 8, Section 5, refers to "full-time employees" and "full-time regular employees." Is there a difference for the application of the penalty overtime pay provisions?

Answer:

No. The penalty overtime pay provisions for full-time employees are applicable to full-time regular and full-time flexible schedule employees.

21. RE: Memorandum. What does the sentence, "In the event these principles are contravened, the appropriate correction shall not obligate the employer to any monetary obligation, but instead will be reflected in a correction to the opportunities available within the list," mean?

Answer:

Where the USPS is not obligated to a monetary payment

by the earlier Memorandums, which deal with the administration of the ODLs; it is not further obligated by the 1984 Memorandum.

22. Do paid leave hours for part-time employees count towards the 10- and 56-hour limits?

Answer:

Yes, this is the same as for full-time employees.

Thomas J. Fritsch
U.S. Postal Service

Moe Biller
American Postal Workers,
AFL-CIO

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

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

January 6, 1998

Dear Sam:

I am in receipt of management instructions regarding the payment process for employees eligible for Penalty Pay (enclosed). These instructions state that "If an employee has FULL DAY leave in any of the following leave categories, that amount of leave will be subtracted from the amount of PENALTY OVERTIME paid on the second non-scheduled day". These instructions conflict with the contractual requirements for compensating employees:

> "on more than four (4) of the employee's five (5) scheduled days in a service week or work over ten (10) hours on a regularly scheduled day, over eight (8) hours on a non-scheduled day; or over six (6) days in a service week. There is no limiting language on these obligations providing that such payments only apply when an employee has "worked" 40 hours during the service week."

This is to request that you schedule a meeting to discuss these instructions at your earliest convenience. To prevent any later misunderstanding regarding the employer's obligation, it is the union's position that any employee who has been denied appropriate compensation should be made whole.

Sincerely,

William Burrus
Executive Vice President

Sam Pulcrano, Manager
Contract Administration, APWU/NPMHU
Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

cc: G Bell

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

FEB 1998

February 5, 1998

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Dear Mr. Burrus:

This letter is in further response to your January 6, 1998 correspondence and our teleconference with Ms. Cheryl Hubbard of Corporate Payroll/Accounting regarding what you termed "management instructions" (a copy of which you enclosed with your letter) for an adjustment process to determine employee eligibility for Penalty Pay.

As discussed, the Family Medical Leave Act (FMLA) required payroll to capture the family and medical leave absences. The hours codes developed for FMLA in the Electronic Time Clock (ETC) system is tied to hours codes already in the system today. As clearly stated during our teleconference, there is no change on how penalty overtime is calculated because of the addition of FMLA hours codes in ETC.

I hope this fully satisfies your inquiry. If you have any further questions, please do not hesitate to contact me at (202) 268-3811.

Sincerely,

Samuel M. Pulcrano
Manager
Contract Administration (APWU/NPMHU)

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

OVERTIME LABOR-MANAGEMENT MEETING
APWU Board Room
January 29, 1985 -- 2 PM

Present:	APWU	USPS
	Bill Burrus	Steve Alpern
	Tom Neill	Bruce Evans
	Dick Wevodau	Al Johnson
	Larry Gervais	Nick Barranca
	Phil Tabbita	

Alpern: NALC not available to meet today, so we are not in position to nail down joint agreement on interpretation. We can tell you our positions and feelings and discuss concerns.

USPS wants to work out interpretation since there were things neither party thought about when language was written.

Burrus: Will it be position of USPS that NALC must always be present in future for discussion of interpretive issues?

Alpern: No. This is exception because language is so new.

NOTE: Evans passed out "Article 8 Briefing Information" which is a series of Questions and Answers prepared by USPS (attached).

Burrus: What instructions went out with this, because we have four or five separate sets of regional/district/local instructions?

Evans: Cover letter did not address the problem of Regional or local instructions.

Burrus: Referring to APWU Agenda - Item #1--Do you agree that twelve hours per day and sixty hours per week are maximums beyond which an employee may neither volunteer nor be required to work?

Alpern: Refer to #33 USPS Q & A--this is not authorization to violate but just how to handle if violation occurs.

Suggested going through USPS Q & A noting agreement or disagreement.

Burrus: We will go through Q & A paper reserving right to withhold judgment on particular issue.

Alpern; We will not hold you to anything said today off the top of your head.

Burrus: Page #1, circle 5--does part-time apply to PTF and PTR?

Alpern: Yes.

Wevodau: What about time sensitive work? Overhauls exceed restrictions--holding to restrictions will extend time it will take to do overhauls.

Burrus: We are reluctant to start making exceptions to restrictions. Page #1, circle 5--this would be improved if specific reference was made to PTR.

Neill: Examples used in Postal Bulletin show sixty-four and seventy-four hours per week. Aren't those bad examples? encourage violations?

Evans: People still have to be paid, violations or not.

Neill: What if we brought repeated violations to your attention?

Alpern: We would correct them.

Neill: Q.2--Are employees volunteering for twelve hours by signing ODL?

Evans: Those with or without asterisks could work up to twelve hours.

Alpern: Other Q and A's make it clear that asterisks go first.

Neill; Suggested improving Answer #2.

Answer #4, last sentence--how do you determine "required work"? Can a supervisor decide he wants to clean up mail or must a dispatch require it?

Gervais: For example, a supervisor keeps everyone fifteen minutes to sweep LSM rather than one hour for ODL people.

Evans/Alpern:

This is not a new problem--same as situation before--language does not change. Each decision has to be made on individual facts. If a supervisor wants to go fishing, then fifteen minutes for everyone is wrong. If supervisor has to go to another unit and no supervision will be available during an hour, it may be right.

Gervais: Then it can't be an arbitrary decision?

Alpern: Right.

Burrus: Q.5--I am reading into answer that employee may not work second non-scheduled day or fifth regular day, correct?

Johnson: This question addresses the old five consecutive day restrictions. It is meant to show that the five consecutive day restriction has been negated.

Alpern: Do you agree that the five consecutive day restriction is gone?

Burrus: Yes.

Q.7 and Q.8--"normally" implies exceptions. Previously, we understood there will be circumstances in which violations occur, but not sanctioned exceptions. "Should not" would be better than "normally."

Alpern: You would prefer the answer to read more like the answer in #9?

Burrus: Yes.

Neill: Q.10--In this example, doesn't employee work OT on five regular days in the first week?

Alpern: No. It is confusing. Employee will not work OT everyday--example was to show employee could work eleven days in a row.

Neill: Will you fix up this question?

Alpern: We will look at it. You make a legitimate point.

Burrus/Gervais:

Q.13--are you saying that supervisors can't say, "You can't work today because later in the week you may exceed limits."?

Alpern: Yes, correct.

Evans: Unless APWU/NALC and USPS agree that it should be handled differently.

Burrus: I work Saturday-Sunday, both NS days. I have twenty-four hours already, what happens the rest of the week?

Alpern: You can't work but eight on NS day.

Gervais: What about eight hours on Saturday, eight hours Sunday, twelve hours on Monday, Tuesday and Wednesday--what happens on Thursday?

Johnson: We wouldn't work employee four hours OT on Wednesday.

Alpern: If we get to that point--and we shouldn't--we would say the eight hours per day, forty hours per week guarantee supercedes the 5.F and 5.G restrictions.

Johnson: Is it the APWU position that we only work the employee four hours on Friday and pay four-hour guarantee? even though we have work?

Burrus: Yes, once you make exceptions to twelve and sixty, you weaken maximums.

Alpern: Real solution is to avoid this happening--what to do if it happens we may not agree on.

Gervais: You can control and avoid violations.

Alpern: What about motor vehicle driver who gets stuck on the road? We can't control that?

Burrus: A.14--"should be required to work" has connotation that ODL employee can be forced to work beyond restrictions.

Alpern: We intended the required work to be within limitations.

Neill: We suggest adding before semi-colon "within applicable limitations."

Gervais: A.15--"time frame" has to be real, not imagined.

Alpern: Yes. It will be a supervisor's judgment, but it has to be a reasonable judgment.

Burrus: How is USPS interpreting "service day"? There are two, the service day and the employee's service day.

Alpern: It would have to be the employee's service day. Otherwise, theoretically, we could work an employee sixteen plus hours straight without violating the Agreement.

Burrus: We have no disagreement with employee's service day.

Q.21 and 22--Is "volunteer" meant to stand out, implying employee could be required to work?

Alpern: No. It wasn't meant that an employee could be required to work more.

Burrus/Gervais:

Q.23 and Q.24--What contract language states an employee can't volunteer? Bloch award was not wiped out in total.

Johnson/Evans:

We believe Bloch award was wiped out.

Gervais: We were very specific about twelve and sixty but not about exceeding 5.F restrictions.

Johnson: Is APWU saying that someone volunteering for seven eight-hour days would not violate contract?

Gervais: Yes.

Alpern: Are you saying we would have to pay penalty pay?

Gervais: Yes.

Alpern: Argued penalty pay might not be appropriate if USPS allowed voluntary work beyond 5.F restrictions. Can we go to people not at double-time before we take these volunteers?

Gervais: Contract provides if person is on ODL but not yet at double-time, you can take him first.

Alpern: Is APWU saying we have to ask persons on the list on seventh day before going off list?

Gervais: Yes and fifth regular day and more than eight hours on NS day as long as they don't exceed sixty hours.

Burrus: Bloch interpreted 5.D which we didn't change. There is no reason why Bloch interpretation should be changed.

Gervais: Penalty pay is to encourage proper staffing, and get overtime down.

Alpern: We understand your position.

Burrus: Q.26 is confusing. Question does not refer to leave but answer does.

Johnson/Alpern:

No difference whether leave or work, it counts toward hours worked.

Neill: Q.28--If employee does not work holiday, how much OT can he work?

Johnson: 20 hours.

Neill: If he does work holiday?

Johnson: 20 hours.

Gervais: Q.30--I am scheduled Saturday through Wednesday. I take LWOP on Wednesday. Can you work me OT on Thursday and Friday?

Johnson: Without penalty OT, yes.

Gervais: I'm not sure I agree.

Alpern: We're not sure. What do we do now?

Johnson: We have considered paid leave as work, but not LWOP.

Gervais: What about the opposite? I work OT on my NS days, Saturday and Sunday. Sunday goes in as penalty. I take LWOP on Friday. What would you do?

Johnson: Take out penalty pay for Sunday.

Gervais: Leave, including LWOP, has been considered work. You have to change what you have done in the past to get to where you are now.

Burrus: Q.31--I agree with this example; but you also have travel and other training situations.

Johnson: Where we were previously paying overtime, we will continue to pay. If it adds up to penalty, we will pay penalty.

Johnson/Alpern:

What if scheme study takes person over restrictions? Or someone on the list complains that they should get that OT?

Burrus/Neill:

No problem.

Alpern: Training--we have always reserved the right to schedule training. We may schedule to avoid penalty. We may also require OT to avoid excessive breaks in study schedule.

Gervais: I'm concerned that some managers will cancel training anytime penalty pay is involved.

Barranca: That would be cutting off your nose to spite your face.

Burrus: AMO person's travel time could get into OT. A person on the list might complain. I don't think that this travel, while compensable, is work for our purposes here.

Q.33--instead of "in excess," I would prefer "in violation."

Gervais: What we are saying is that if the contract is consistently violated, we don't think penalty pay is only remedy we can seek.

Gervais/Burrus:

Q.36 and Q.37--Please explain 37.

Evans: If you work four 12-hour regular scheduled days and then eight hours on NS day, then you would be paid eight hours at time-and-one-half for NS day.

Our first recourse would be not to bring person in on NS day and consider person unavailable. Our second recourse would be to work person eight hours at time-and-one-half. If we did send person home, we would pay guarantee time.

Gervais/Neill:

We need to think this one through.

Burrus: Q. 39--what do you mean?

Johnson: Employee is limited to eight hours.

Alpern: We hold to eight-hour limit on NS day.

Burrus: December exceptions--is it your understanding that both penalty pay and work limit restrictions are waived during December?

Alpern: Yes.

Burrus: But you still hold to using ODL list before non-volunteers. What do you perceive outer limits you must work ODL employees before going off list?

Alpern: No limits. No limits previously. When list was not enough we went off list.

What do you think we should do during December?

Neill: We will have to get back to you.

Referring to point #5 on APWU Agenda--Certain local and regional Postal officials are declaring multiple Overtime Desired Lists to be inconsistent? Your position?

Evans: We don't agree that new Article 8 changes have no effect on local ODLs. There is some history that multiple ODLs are in conflict. New Article 8 language also affects them.

Burrus: If locals can agree and live with multiple lists, why would you object?

We can argue about what contract says later.

Alpern: It can cause problems. For example, if we have to go to "after tour" list and pay pealty rather than getting someone from "pre-tour" list.

Burrus: Local parties can work those things out.

Alpern: Perhaps, but where multiple lists may not have been inconsistent before, they may be now.

Johnson: Institutionally, we have taken a position that we have problem with more than one list.

Burrus: Q.41--does this address PS going to EAS?

Johnson: Q.41 addresses EAS going to PS, not vice versa.

Gervais; Give me an example--how would EAS work in the PS schedule?

Johnson: An E&LR typist might move to Personnel Clerk in a small office because no one else is qualified to cover an absence.

Gervais: It seems that your setting up a scenario that would violate the contract (Articles 1.6 and 7.2).

Barranca: What obligation would I have to offer twelve hours (after tour) to someone on a pre-tour list?

Burrus; If I put my name on "pre-tour" list, then asterisks have no meaning unless it is four hours before tour.

Barranca: Same thing applies to "post tour" list?

Burrus: Yes. The twelve hours is handled no differently than the ten hours is handled.

Adjourned 5:15 PM.

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

March 4, 1983

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Burrus:

This is in further reference to your February 15 letter concerning the use of SF-8, Notice to Federal Employees About Unemployment Compensation, and its application pursuant to 553.122 of the Employee and Labor Relations Manual (ELM).

Existing regulations in the referenced section of the ELM require prompt issuance of SF-8 to employees being separated from the Postal Service; being transferred to another federal agency or to a postal facility serviced by another Postal Data Center; or being placed in a non-pay status for seven or more consecutive days. Individuals whose work hours or tours of duty are on an "on-call" or intermittent basis should be issued SF-8 only the first time in each calendar year that they are placed in a non-pay status.

There may have been occasions when SF-8 was not issued to employees, as you alleged, because of some inadvertant omission on the part of the separating personnel office. If you have information establishing that a specific location routinely fails to meet the SF-8 issuance requirements, and wish to share it with us, we shall see that appropriate corrective action is taken.

Periodically, a notice reminding personnel officials of the requirement for issuing SF-8 is published in the Postal Bulletin. As information, such a reminder currently is being prepared by the Employee Relations Department and is expected to be ready for publication in the near future.

Sincerely,

James C. Gildea
Assistant Postmaster General
Labor Relations Department

American Postal Workers Union, AFL-CIO
817 Fourteenth Street, N.W. Washington, D.C. 20005 • (202) 842-4250

WILLIAM H. BURRUS
General Executive Vice President

9A

February 15, 1983

Mr. James C. Gildea
Assistant Postmaster General
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

Dear Mr. Gildea:

The Employee and Labor Relations Manual at Chapter 553.122 requires the employer to issue Form SF-8 "to an individual whose work or tours of duty are on an "on call" or intermittent basis ach time they;

a. separate from the USPS for any reason,
b. transfer to another federal agency or to a postal installation serviced by another PDC,
c. are (or will be) placed in a non-pay status for 7 or more consecutive days.

The Employer does not issue Form SF-8 to employees in compliance with the above and as a result affected employees are not advised of eligibility for unemployment compensation and/or the steps to be taken in filing a claim.

Please advise me of the reasons for non-compliance.

Sincerely,

William Burrus,
Executive Vice President

B:mc

LABOR RELATIONS

UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

March 17, 1994

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This letter is in reference to our discussions regarding the scheduling of part-time regulars (PTRs) and my March 16 correspondence on the same subject.

We have advised our field personnel that PTRs' schedules should not be altered on a day-to-day or week-to-week basis. They are normally to be worked within the schedules for which they are hired. However, PTRs can be permanently scheduled for any number of day(s) per week from one to six. There is no minimum number of hours for which they can be scheduled, except as provided under Article 8 provisions, and they can occasionally be required to work beyond their scheduled hours of duty. Still, care should be taken not to extend PTRs' work hours on a regular or frequent basis.

If you have any questions, please contact Curtis Warren of my staff at 202-268-5359.

Sincerely,

William J. Downes
Manager
Contract Administration APWU/NPMHU
Labor Relations

LABOR RELATIONS

UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

March 16, 1994

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This letter is in reference to our discussions regarding the scheduling of part-time regulars (PTRs).

We have advised our field personnel that PTRs' schedules should not be altered on a day-to-day or week-to-week basis. They are normally to be worked within the schedules for which they are hired. However, PTRs can be permanently scheduled for any number of day(s) per week from one to six. There is no minimum number of hours for which they can be scheduled and they can occasionally be required to work beyond their scheduled hours of duty.

If you have any questions, please contact Curtis Warren of my staff at 202-268-5359.

Sincerely,

William J. Downes
Manager
Contract Administration APWU/NPMHU
Labor Relations

American Postal Workers Union, AFL-CIO
1300 L Street, NW, Washington, DC 20005

December 8, 1993

William Burrus
Executive Vice President
(202) 842-4246

Dear Tony:

I have had the opportunity to review an arbitration decision of a grievance initiated in the Boston, Massachusetts office. The subject of the grievance was the authority of the Postal Service to expand the hours of part time regular employees. The decision was "The Postal Service violated the collective bargaining agreement by expanding the work hours of Part-Time Regular clerks..." The Boston office participates in the modified grievance pilot program so the award is limited as precedent to future cases arising out of that office.

Despite the limitations of the award it has been publicized via the Boston local paper and will be distributed nationwide. This will lead to the filing of numerous local grievances throughout the country.

This is to request that the parties at the national level discuss the issues involved to determine if mutual agreement can be reached. I believe that it is in our mutual interest to reach an agreement in lieu of receiving dozens of conflicting arbitration awards.

Thank you for your attention to this matter.

Sincerely,

William Burrus

William Burrus
Executive Vice President

Anthony Vegliante, Manager
Grievance & Arbitrations
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Re: Q94C-4Q-C 97113133

Dear Mr. Burrus:

On August 29, 1997, we met to discuss the above-captioned grievance at step 4.

The issue in this grievance involves compensation for employees who were required to perform work necessary for the Postal Service to carry out its mission during the United Parcel Service (UPS) strike.

The parties mutually agree to the following as full and final settlement of this grievance:

1. This settlement is without prejudice to either party's position regarding what rights the Postal Service has under Article 3.F to take whatever actions may be necessary to carry out its mission during an emergency. That issue will be addressed in case Q94C-4Q-C 97113514.

2. Without addressing the question of whether there was a contractual violation, the parties agree that full-time employees who worked more than 12 hours in a single day or 60 hours within a service week, and who have filed a timely grievance, shall be paid an additional premium (in addition to the applicable rate specified in Article 8, Section 4) of 50 percent of the base hourly straight time rate for those hours worked beyond 12 hours in a day or 60 hours in a service week. Payment of this premium will constitute full and final settlement of all such timely filed grievances.

3. Without addressing the question of whether there was a contractual violation, the parties agree that in any instance in which the APWU can adequately demonstrate that a particular employee(s) was harmed as a result of the Postal Service's use of employees from other crafts during the UPS strike without meeting the conditions of Article 7.2, such employees who have filed a timely grievance will be compensated at the appropriate overtime rate for any hours it is demonstrated they were displaced by employees from other crafts.

4. Without addressing the question of whether there was a contractual violation, the parties agree that in any instance in which the APWU can adequately demonstrate that a particular employee(s) was harmed as a result of the Postal Service's use of employees on overtime without following the contractual requirements on overtime assignments, such employees who have filed a timely grievance will be compensated at the appropriate overtime rate for any hours it is demonstrated they were displaced by other employees.

5. Without addressing the question of whether there was a contractual violation, any timely filed grievances involving the application of Article 8.5.F will be resolved in accordance with the National Agreement and the applicable national arbitration awards, or arbitrated, if necessary.

6. Without addressing whether there were contractual violations, the APWU agrees to withdraw all other grievances related to the UPS strike, other than those pending at the national level, from the grievance-arbitration procedure.

Sincerely,

Daniel P. Magazu
Grievance and Arbitration
Labor Relations

William Burrus
Executive Vice President
American Postal Workers Union, AFL-CIO

Date: 12-17-99

were present at the time the employee was terminated. Reilly v. Kemp, Civil No. 89-885E, U.S. District Court for the Western District of New York, September 3, 1991.

Sunday Premium For Leave Time

The U.S. Claims Court recently found the government liable for failing to include Sunday premium in leave payments when certain employees were scheduled for Sunday and took approved annual and sick leave instead. (Armitage v. U.S., 23 Claims Court 483, June 20, 1991) Though advertisements have solicited employees to become plaintiffs in similar suits against the government, it does not appear that postal employees will be successful in relying on this decision. The decision is inapplicable to postal employees since the United States Postal Service is not covered by either the Tucker Act or Back Pay Act -- the statutory basis for the suit. Furthermore, this case was decided on the basis of the specific wording of a statute providing for Sunday premium pay that does not apply to postal employees. Instead, postal employees have to rely on the contract as well as handbooks or manuals and assert a claim through the grievance procedure. Article 8, Section 6

requires eight full hours of additional compensation at the rate of 25% if any part of regularly scheduled work is within the period commencing at midnight Saturday and ending at midnight on Sunday. However, this language as well as language in the Employee and Labor Relations Manual (Section 434.3) and the F-21 Handbook (Section 242) and the F-22 (Section 242) supports the conclusion that in most circumstances, Sunday premium is computed only for employees who actually perform work on Sunday.

Stewards' Privilege As Employee Representatives

The Federal Labor Relations Authority this year held that communications between union stewards and government employees subject to discipline are not subject to disclosure on the ground that the consultations constitute protected activity. U.S. Department of the Treasury, Customs Service and National Treasury Employees Union, Federal Labor Relations Authority, No. 8-CA-80171, January 8, 1991. This decision follows the National Labor Relations Board's decision in Cook Paint & Varnish Company, 258 NLRB 1230; 108 LRRM 1150 (1981) which is applicable to postal employees. In that decision, the Board stated that

UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260

August 10, 1994

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

Enclosed is a copy of our memorandum to field installations announcing plans to test the modified work week. The memorandum includes the list of installations that have expressed an interest in being considered as test sites as well as the two page list of test criteria that we have mutually agreed upon.

If you have any questions regarding the foregoing, please contact me (202-268-7691) at your convenience.

Sincerely,

William J. Downes

William J. Downes
Manager
Contract Administration APWU/NPMHU
Labor Relations

Enclosure

UNITED STATES POSTAL SERVICE

Washington, DC 20260

DATE: August 9, 1994

OUR REF: LR400:FXJacquette:cmv:20260-4125

SUBJECT: Four-Day Workweek

TO: See Distribution List

Either you or your APWU Local has requested participation in a test of the modified workweek concept of four workdays of ten hours each per week (10/4). The parties at the national level have agreed to explore alternative work schedules on a limited basis where local management and APWU officials mutually agree to participate. You are requested to discuss this matter with local union officials and notify us by ~~September 1~~ ASAP of your decision to participate or decline.

The purpose of this test will be to determine if modified workweeks can be successfully introduced into our field operations. Success is defined as improvement in employee morale, improvement in or, at a minimum, no degradation in performance quality, no reduction in productivity and no increase in operating cost.

To assist you in making this decision, we have attached the criteria that must be followed. A decision to participate will require you to submit a proposed test plan for approval. The plan must be agreed upon jointly.

If you have any questions regarding the foregoing or relative to the attached material, please contact Frank Jacquette (202-268-3843) or Gloria Gray (202-268-4870).

William J. Downes
Manager
Contract Administration APWU/NPMHU
Labor Relations

Attachment

cc: Mr. William Henderson

Distribution List

Plant Managers
- Albuquerque, NM
- Bangor, ME
- Buffalo, NY
- Columbia, SC
- Denver, CO
- Des Moines, IA
- Detroit, MI
- Eugene, OR
- Ft. Wayne, IN
- Grand Rapids, MI
- Honolulu, HI
- Lakeland, FL
- Las Vegas, NV
- London, KY
- Long Beach, CA
- New Haven, CT
- New Orleans, LA
- Oklahoma City, OK
- Oshkosh, WI
- Phoenix, AZ
- Providence, RI
- Tacoma, WA
- Tampa, FL
- Wausea, WI

Managers
- Philadelphia, PA BMC
- Seattle, WA BMC

Postmasters
- Battle Creek, MI
- Ft Collin, CO
- Hayward, CA
- Jacksonville, FL
- Littleton, CO
- Long Island, NY
- Newton, NC
- Port Washington, NY
- Rancho Santa Fe, CA
- Tewksbury, MA

MODIFIED WORKWEEK CRITERIA

Local parties wishing to test a modified workweek concept must address the following items:

1. The local parties must identify the specific craft(s) and section(s) that will be included in the test.

2. The local parties must agree on the bidding procedure that will be used to fill the modified assignments and the manner in which the resultant vacancies (if any) will be filled.

3. The local parties must develop the procedure for returning volunteers to their regular 8/5 assignment.

4. The local parties must determine if separate overtime desired lists will be used for modified workweek assignments.

The following procedures are applicable to modified workweek assignments and are not subject to modification locally:

1. Daily overtime on 10/4 assignments will be paid at the penalty overtime rate (after 10 hours).

2. Non-scheduled day guarantees remain at 8 hours and penalty overtime will be paid for work in excess of 8 hours on a non-scheduled day.

2. Leave must be taken for each hour of absence, therefore it will be necessary to use ten hours leave to cover a full day.

3. Ten hours of holiday leave will be granted when an employee is scheduled off on a holiday.

4. Holiday premium pay is limited to 8 hours per holiday.

5. Sunday premium will be paid for all eligible straight time hours (i.e. 10 per work day).

6. Court leave will be paid the same (i.e up to 10 hours per day).

7. Military leave will be granted at 10 hours per day but may not exceed 120 hours per year for full-time employees or 80 hours per year for part-time employees.

8. When appropriate, Administrative leave may be granted up to 10 hours per day.

9. Overtime is paid only after 10 hours on a regularly scheduled day.

There are no automated time keeping systems to accomodate a modified workweek. It will be necessary for local installations to expend considerable resources on manual timekeeping efforts for employees on a modified schedule.

Local management will be required to track the following for evaluation purposes:

a. Unscheduled absences separately for 10/4 and 8/5 employees.

b. Accident/injury rates separately for 10/4 and 8/5 employees.

c. Overtime rates separately for 10/4 and 5/8 employees.

d. LWOP rates separately for 10/4 and 5/8 employees.

e. For each operation where the modified workweek is implemented:

   1. The total number of employees assigned to the operation vs SPLY.

   2. The number of plan failures vs SPLY.

   3. Productivity rates vs SPLY.

   4. Grievance rates vs SPLY.

UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260

August 10, 1994

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, APL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

Enclosed is a copy of our memorandum to field installations announcing plans to test the modified work week. The memorandum includes the list of installations that have expressed an interest in being considered as test sites as well as the two page list of test criteria that we have mutually agreed upon.

If you have any questions regarding the foregoing, please contact me (202-268-7691) at your convenience.

Sincerely,

William J. Downes
Manager
Contract Administration APWU/NPMHU
Labor Relations

Enclosure

MODIFIED WORKWEEK CRITERIA

Local parties wishing to test a modified workweek concept must address the following items:

1. The local parties must identify the specific craft(s) and section(s) that will be included in the test.
2. The local parties must agree on the bidding procedure that will be used to fill the modified assignments and the manner in which the resultant vacancies (if any) will be filled.
3. The local parties must develop the procedure for returning volunteers to their regular 8/5 assignment.
4. The local parties must determine if separate overtime desired lists will be used for modified workweek assignments.

The following procedures are applicable to modified workweek assignments and are not subject to modification locally:

1. Daily overtime on 10/4 assignments will be paid at the penalty overtime rate (after 10 hours).
2. Non-scheduled day guarantees remain at 8 hours and penalty overtime will be paid for work in excess of 8 hours on a non-scheduled day.
2. Leave must be taken for each hour of absence, therefore it will be necessary to use ten hours leave to cover a full day.
3. Ten hours of holiday leave will be granted when an employee is scheduled off on a holiday.
4. Holiday premium pay is limited to 8 hours per holiday.
5. Sunday premium will be paid for all eligible straight time hours (i.e. 10 per work day).
6. Court leave will be paid the same (i.e up to 10 hours

per day).

7. Military leave will be granted at 10 hours per day but may not exceed 120 hours per year for full-time employees or 80 hours per year for part-time employees.

8. When appropriate, Administrative leave may be granted up to 10 hours per day.

There are no automated time keeping systems to accomodate a modified workweek. It will be necessary for local installations to expend considerable resources on manual timekeeping efforts for employees on a modified schedule.

Local management will be required to track the following for evaluation purposes: QUARTERLY

a. Unscheduled absences separately for 10/4 and 8/5 employees.

b. Accident/injury rates separately for 10/4 and 8/5 employees.

c. Overtime rates separately for 10/4 and 5/8 employees.

d. LWOP rates separately for 10/4 and 5/8 employees.

e. For each operation where the modified workweek is implemented:

   1. The total number of employees assigned to the operation vs SPLY.

   2. The number of plan failures vs SPLY.

   3. Productivity rates vs SPLY.

   4. Grievance rates vs SPLY.

UNITED STATES POSTAL SERVICE

Washington, DC 20260

DATE:

OUR REF: LR400:FXJacquette:cmv:20260-4125

SUBJECT: Four-Day Workweek

TO: See Distribution List

Either you or your APWU Local has requested participation in a test of the modified workweek concept of four workdays of ten hours each per week (10/4). The parties at the national level have agreed to explore alternative work schedules on a limited basis where local management and APWU officials mutually agree to participate. You are requested to discuss this matter with local union officials and notify us by June 15 of your decision to participate or decline.

The purpose of this test will be to determine if modified workweeks can be successfully introduced into our field operations. Success is defined as improvement in employee morale, no degradation in performance quality, no reduction in productivity and no increase in operating cost.

To assist you in making this decision, we have attached the criteria that must be followed. A decision to participate will require you to submit a proposed test plan for approval. The plan must be agreed upon jointly.

If you have any questions regarding the foregoing or relative to the attached material, please contact Frank Jacquette (202-268-3843) or Gloria Gray (202-268-4870).

William J. Downes
Manager
Contract Administration APWU/NPMHU
Labor Relations

Attachment

TO: FRANK JACQUETTE/USPS

SUBJECT: TEN/4 WORKWEEK

Albuquerque, NM
Bangor, ME
Battle Creek, MI
Buffalo, NY
Columbia, SC
Denver
Des Moines
Detroit, MI
Eugene, OR
Ft Wayne, IN
Grand Rapids
Hayward, CA
Honolulu
Lakeland, FL
Las Vegas
Littleton, CO
London, KY
Long Beach
Long Island, NY
New Orleans
Newton, NC
Oshkosh, WI
Philadelphia BMC
Phoenix, AZ
Port Washington, NY
Providence, RI
Seattle BMC
Tacoma
Tampa, FL
Tewksbury, MA
Wausau, WI

FROM BILL BURRUS/APWU

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Memo

To: Bill Burrus
From: Phil Tabbita PT
Date: May 25, 1994

RE: 10/4 Work Week

The Postal Service had a number of programs in place for the Miami 10/4 project. Those programs are still available but not in current use. They could be used in PSDS offices. For ETC offices there is a similar set of programs currently in use at the Data Centers. Neither set of programs totally automates the function. Some manual edits are required.

432.3 Work Schedules and Overtime Limits

.31 **Basic Work Week.** The basic work week for full-time employees (bargaining unit and non-bargaining unit) consists of five regularly-scheduled 8-hour days within a service week. See exclusions in 432.33.

.32 **Maximum Hours Allowed.** The maximum hours allowed depends on employee classifications as follows:

b. Other Full-Time Bargaining Unit Employees. Except for the month of December and in emergency situations as defined in the bargaining agreement, these employees may not be required to work over 10 hours in a day or 6 days in a week.

c. All Other Employees. Except in emergency situations as determined by the PMG (or designee), these employees may not be required to work more than 12 hours in one service day. In addition, the total hours of daily service, including scheduled work hours, overtime, and meal time, may not be extended over a period longer than 12 consecutive hours.

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

March 1, 1996

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

Dear Bill:

This will serve to respond to your letter to me dated January 30, 1996, and the December 18, 1996, Step 4 grievance over the Annuity Protection Program prompted by my earlier December 11, 1995, letter to you. Prior to Christmas, we discussed this issue over the telephone and discovered that we had a common understanding of this program and that no Step 4 American Postal Workers Union, AFL-CIO (APWU) grievance needed to be pursued. I will try to set forth below our mutual understanding.

The 1994 APWU-USPS National Agreement does not contain a memorandum on Annuity Protection which was executed for each labor contract since 1981. This is the case because we are sunsetting the Annuity Protection Program due to the fact that the COLA paid under the 1991 Agreement was rolled in at the beginning of the 1994 Agreement consistent with our pre-1981 practice and thus, there is no delay in rolling in the COLA as was the case since the 1981 Agreement.

The 1987 Agreement COLA ($2517) was rolled in to basic pay in February 1995 pursuant to Article 9.6.C for those not eligible for earlier roll in. The question remains are these career employees covered by the February 1995 roll in ($2517) protected by Annuity Protection if they experience optional or disability retirement or death prior to February 1998? The answer is in the affirmative. The Annuity Protection Program Memorandum on page 270 of the 1990 Agreement (Handbook EL-901) remains in effect and governs the calculation of either retirement or death benefits through February 1998 for this class of employee. In light of the foregoing, the APWU Step 4 grievance filed by you dated December 18, 1995, on this subject is rendered resolved and considered to be withdrawn by the Postal Service.

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

As to the second point in your January 30, 1996, letter, the Postal Service contracted with an outside tax attorney/CPA to advice us on whether to issue W-2s or 1099s. We were advised to use W-2s based on a review of Internal Revenue Service (IRS) Tax Code, Sections 3401-3405.

Sincerely,

D. Richard Froelke, Manager
Negotiations Planning and Support

I concur:

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

3-5-96
Date

3812

APWU

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

December 18, 1995

Dear Mr. Froelke:

This is to respond to your letter of December 11, 1995 regarding continuation of the Annuity Protection Program. It is apparent that you fail to understand the issue that I raised in my letter of November 17, 1995. Such misunderstanding on your part is not surprising as you did not grasp the issues I raised on September 30, 1995, immediately preceding receipt of the final award. Perhaps if you spent less time posturing for a future defense you could comprehend the issue before you.

Pursuant to the terms of the 1995 national agreement this is to initiate a Step 4 grievance protesting the employer's interpretation of coverage under the Annuity Protection Program. The union interprets the parties commitment to extend annuity protection to all employees who were denied COLA roll-in and this protection continues until all employees are protected against the delayed affect of prior COLA.

Employees who were denied credit for the 1987-1990 COLA until the roll-in of November 1995 and who retire on disability or die prior to November 1998 are guaranteed that they will not receive a diminished annuity because of the delayed roll-in.

Sincerely,

William Burrus
Executive Vice President

Richard Froelke, Manager
Negotiations Planning & Support
475 L'Enfant Plaza, SW
Washington, DC 20260

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

January 30, 1996

William Burrus
Executive Vice President
(202) 842-4246

Dear Mr. Froelke:

This is a reminder of our telephone conversation immediately prior to the Christmas holidays regarding the Annuity Protection Program. As I recall, you planned to reduce to writing your understanding of the application of the APP to employees who retire prior to having three years of service at the salary level, including COLA.

In addition, I have received inquiries as to the reason the Postal Service provided retirees or dependents **Form 1099** when payments were made on a quarterly basis, but changed to **Form W2** when the lump sum payments were issued. I am certain that the reason is included in IRS regulations, but you could be of assistance in providing me with the appropriate citation.

Thank you for your attention to this matter.

Sincerely,

William Burrus

William Burrus
Executive Vice President

Richard Froelke
Negotiations Planning & Support
U.S. Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

December 11, 1995

DEC 1995

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

Dear Mr. Burrus:

Your November 17, 1995, letter to Mr. Mahon regarding the sunset Annuity Protection Program (APP) and the November 1995 roll in of the accumulated COLA under the 1990 Agreement has been referred to this office for reply. I am amazed at your letter because we had a late night meeting on September 30, 1995, concerning several topics, including the subject of your letter. This was just prior to the Clarke Board executing the Award on the morning of October 1. We made clear that the APP system was being sunset and that no APP Memo existed with respect to the COLA accumulated under the 1990 Agreement. The Postal Service sought and the Clarke Board awarded in Part 4 of the document, the November 1995 roll in of the 1990 Agreement's accumulated COLA. This is precisely how the COLA roll in under the 1971,1973, 1975, and 1978 Agreements where no APP was ever evident. In sum, consistent with our position articulated to you on September 30, 1995, no APP is in existence relative to the 1990 Agreement's accumulated COLA rolled into basic pay in November 1995 pursuant to the terms of the Clarke Award. Your silence in not pursuing this matter with the Clarke Board on October 1 reaffirms our view that you understood the position we advanced to you on September 30 and consequently, this issue is behind us.

Thank you for allowing me the opportunity to set forth our views on this matter.

Very truly yours,

D. Richard Froelke, Manager
Negotiations Planning and Support

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

November 17, 1995

Dear Mr. Mahon:

Following the recent arbitration procedure and award, I had several discussions with USPS representatives regarding the applicability of the Annuity Protection Program to employees who were not permitted to roll-in COLA from prior contracts. Such employees who retire on disability prior to November 1998 will have their retirement based upon their high-3 years of service at the time of retirement. Such high-3 will not reflect the COLA that was not rolled-in until November, 1995 and the employees will be required to work the subsequent three years before receiving full credit for the unrolled COLA.

This is to inform you that the American Postal Workers Union interprets the obligation of the employer to continue protections under the Annuity Protection Program for all employees until the expiration of its coverage under prior agreements.

Thank you for your attention to this matter.

Sincerely,

William Burrus
Executive Vice President

Mr Joseph J Mahon, Jr
Vice President
Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb

UNITED STATES POSTAL SERVICE
ROOM 9014
475 L ENFANT PLAZA SW
WASHINGTON DC 20260-4100
TEL (202) 268-3816
FAX (202) 268-3074

SHERRY A CAGNOLI
ASSISTANT POSTMASTER GENERAL
LABOR RELATIONS DEPARTMENT

March 17, 1992

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This letter is in response to your inquiry concerning the COLA roll-in provision under the 1990 National Agreement and its applicability to employees covered by FERS.

After a careful review of the union's position as set forth in its September 10, 1991, letter, and a corresponding review of our implementing instructions on COLA roll-in, we agree that employees covered by FERS who are presently eligible for reduced optional retirement or who will become eligible for reduced optional retirement by November 21, 1997, are eligible to roll-in existing COLA under the provisions of Article 9, Section 6.B of the 1990 National Agreement. It is our intention to offer them the 1991 COLA roll-in option as well as all future COLA roll-in election opportunities.

As soon as the union concurs in our extending this offer, we will proceed to identify all FERS employees who would have been eligible in 1991 to elect the COLA roll-in and they shall be offered the opportunity to elect COLA roll-in retroactively to October 5, 1991.

If the union is in agreement with the aforementioned arrangement, please indicate its approval by having

Mr. Biller sign and return one copy of this letter to us. If you have any questions concerning this matter, please contact Vincent W. Drumb at (202) 268-3812.

Sincerely,

Sherry A. Cagnoli

Concurred: Moe Biller
Moe Biller
National President

Date: March 18, 1992

Enclosure

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

UNITED STATES POSTAL SERVICE

AND THE

AMERICAN POSTAL WORKERS' UNION, AFL-CIO

Re: Lump Sum Eligibility

For payment of the lump sums specified in the Opinion and Award of the Clarke Interest Arbitration Board issued October 1, 1995, the parties agree to apply the criteria for eligibility used in payment of the 1990 one-time cash payments. These criteria are set forth in the Memorandum of Understanding of June 18, 1991 and letters dated July 19, 1991 and September 9, 1991 (as attached).

We further agreed that this is without prejudice to the position of either party on any other issue currently pending.

Dated:

Anthony J. Vegliante
Manager
Contract Administration
(APWU/NPMHU)

William Burrus
Executive Vice President
American Postal Workers'
Union, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260

July 19, 1991

Mr. Moe Biller
President
American Postal Workers Union,
AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Mr. Vincent R. Sombrotto
President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2196

Subject: Eligibility for One-Time Cash Payment

Gentlemen:

This letter is in further regard to matters concerning the determination of eligibility for the one-time cash payment and the one-time COLA cash payment provided for in the 1990 National Agreement. As you are aware, there were certain questions raised after the parties' executed the Memorandum of Understanding on this topic. Specifically, discussions involved establishing certain criteria which, if applied, would determine who was not eligible to receive the referenced payment.

It is our understanding that the following accurately reflects the parties complete understanding as to which employees would not be eligible for such payment:

- Employees who were AWOL for Pay Period 13 (June 1-14, 1991).

- Employees who were in a LWOP or other nonpay approved leave status for the entire period from November 17, 1990, through June 14, 1991. Notwithstanding the above, employees who are members of the National Guard or reserve components of the Armed Forces who served on active duty during the Desert Shield/Storm operations are eligible for the one-time cash payments.

- Employees who, because of disciplinary action, are in a nonpay status from November 17, 1990, through June 14, 1991. If, pursuant to some modification, such disciplined employee is returned to pay status for any of the referenced period of time, such employee would then be eligible for the one-time cash payments as provided for in the 1990 National Agreement.

- All employees not declared ineligible by the above will be considered eligible for the cash payment.

If you agree that this accurately reflects our understanding, please sign below. I am providing three signed copies to the APWU and ask that they sign and forward all three copies to the NALC who, after signing, should forward one of the fully executed documents to the APWU and one to the Postal Service.

Please contact Vince Drumb at 268-3812, should you have any questions concerning the foregoing.

Sincerely,

Sherry A. Cagnoli
Assistant Postmaster General
Labor Relations Department

Moe Biller
President
American Postal Workers Union,
AFL-CIO

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

Enclosures

UNITED STATES POSTAL SERVICE
ROOM 9014
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
TEL (202) 268-3816
FAX (202) 268-3074

SHERRY A CAGNOLI
ASSISTANT POSTMASTER GENERAL
LABOR RELATIONS DEPARTMENT

166 Legal
FJM
FJC

431

September 9, 1991

Re: #389 (closed)
#400
#419

Mr. Moe Biller
President
American Postal Workers Union,
AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Mr. Vincent R. Sombrotto
President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2196

Gentlemen:

This letter is in further regard to matters concerning the determination of eligibility for the one-time cash payment and the one-time COLA cash payment provided for in the 1990 National Agreement. As you are aware, the parties discussed the need to further clarify employees' eligibility to receive the one-time cash payments, and it is our understanding that the following points of clarification on eligibility for payment were agreed to by the parties:

- To be eligible for payment, an employee must be on the rolls of the Postal Service as of the date of the Opinion and Award of the Board of Arbitrators, i.e., June 12, 1991.

- An employee who was in a probationary employment status on the effective date of the Award, i.e., June 12, 1991, will not be eligible to receive the one-time cash payments.

- Nonprobationary full-time or hourly rate employees who are members of the National Guard or reserve components of the National Guard or reserve components of the Armed Forces who served on active duty during the Desert Shield/Storm operations are eligible for the full amount of the one-time cash payments.

If you agree that this accurately reflects our understanding, please sign below. I am providing three signed copies to the APWU and ask that they sign and forward all three copies to the NALC who, after signing, should forward one of the fully executed documents to the APWU and to the Postal Service.

Sincerely,

Sherry A. Cagnoli

Moe Biller
President
American Postal Workers
Union, AFL-CIO

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

Enclosures

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

UNITED STATES POSTAL SERVICE

AND THE

JOINT BARGAINING COMMITTEE

(AMERICAN POSTAL WORKERS UNION, AFL-CIO, AND

NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO)

RE: ELIGIBILITY FOR ONE-TIME CASH PAYMENT AND ONE-TIME COLA CASH PAYMENT

The parties agree that they will establish at the national level a committee to review individual cases, brought directly to the committee by the union, where the union believes that application of the eligibility criteria set forth at Article 9.4.C.1 and 2 would produce inequitable results. The intent of the parties is not to deprive an employee of the one-time cash payment or one-time COLA cash payment solely because such employee is not in a pay status during the pay period immediately prior to the effective date of the one-time cash payment or one-time COLA cash payment. Some examples of where an employee would not be considered ineligible for the one-time cash payment or one-time COLA cash payment include:

A 14-day suspension which happens to fall exactly within the pay period immediately prior to the effective date of the one-time cash payment or one-time

COLA cash payment; Union-Officer leave pursuant to Article 24, Section 2, or other short-term union detail; or short-term approved leave.

For the United States Postal Service

Joseph J. Mahon, Jr.
Senior Assistant Postmaster General
U.S. Postal Service

For the Unions

Moe Biller
President
American Postal Workers Union, AFL-CIO

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

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

July 17, 1996

William Burrus
Executive Vice President
American Postal Workers Union, AFL-CIO
1300 L Street, N.W.
Washington, D.C. 20005-4107

Subject: Settlement of Pay Anomaly Overpayments

Dear Bill:

The parties recognize that approximately 468 employees were erroneously overpaid regarding payments for pay anomaly issues. In full and complete settlement of any and all issues in any forum arising out of such overpayments and subsequent collection efforts by the Postal Service the parties agree as follows:

1. Any monies collected by the Postal Service as of two weeks after the date of this settlement shall not be contested in any forum.

2. Any monies not already collected by the Postal Service as of two weeks after the date of this settlement will not be collected.

3. Any and all grievances arising out of pay anomaly over payment and application of ELM Section 460 are hereby withdrawn.

Please indicate your concurrence with the above terms by signing your name below.

Sincerely,

John W. Dockins
Labor Relations Specialist

William Burrus 7-19-96
William Burrus Date
Executive Vice President
American Postal Workers
Union, AFL-CIO

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

December 22, 1995

Dear Tony:

I have been provided a copy of correspondence and instructions originating from the office of Compensation & Benefits regarding erroneous lump sum payments under the Promotion Pay Anomaly. This information has not been officially provided to the union and to date no discussions have transpired at this level regarding the alleged overpayments.

This is to request a meeting to discuss the issues involved and procedures applied to demand repayment. I further request that any efforts to recover the alleged overpayments be deferred until the parties have had an opportunity to discuss the issues.

The Promotion Pay Anomaly and payment procedures were discussed exclusively at the national level. Individual employees and local officials were not directly involved in the decisions reached for computing pay adjustments or the interpretation and application of the parties agreement to resolve pay anomalies. This most recent issue should be discussed and resolved at this level prior to the initiation of individual letters to employees under the collection procedures.

I request that instructions be issued immediately to defer any collections or acceptance of repayment from or by individual employees until the parties at the national level have had an opportunity to fully discuss the issues involved.

Thank you for your attention to this matter.

Sincerely,

William Burrus

Anthony J. Vegliante, Manager
Grievance & Arbitration Division
475 L'Enfant Plaza, Sw
Washington, DC 20260

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

RE: Promotion Pay

The United States Postal Service (Postal Service) and the American Postal Workers Union, AFL-CIO (APWU) hereby agree to a full, final and binding resolution of all issues which remain in dispute and which arise from the interpretation and application of the June 13, 1990 Memorandum of Settlement reached in Case No. H7C-NA-C 39.

1. On June 13, 1990, the American Postal Workers Union, AFL-CIO, (APWU) the National Association of Letter Carriers, AFL-CIO, (NALC) and the Postal Service entered into a Memorandum of Settlement to resolve what became known as the Promotion Pay dispute.

2. The Memorandum of Settlement provided for the creation of a monetary fund (JBC Fund), to be used for the resolution of JBC promotion pay claims. Effective upon the signing of this Memorandum of Understanding (MOU), the APWU's pro rata share of the JBC Fund will be removed for the purpose of creating an independent "APWU Fund". The APWU's pro rata share of the JBC Fund has been determined to be seventy-eight and six tenths (78.6) per cent.

3. The Postal Service agrees that any money currently held in the JBC Fund which has been transferred to the "APWU Fund" to pay for the employer's portion of FICA tax payments is hereby released and considered available for distribution to APWU employees affected by the promotion pay anomaly. The parties further agree that the provisions of this paragraph resolve any and all claims by the APWU relative to the employer's portion of FICA tax payments in the JBC Fund.

4. The Postal Service agrees to add Two Million, Three Hundred Thousand Dollars ($2,300,000) to the "APWU Fund".

5. Effective twelve (12) full pay periods after the signing of this MOU, salary history corrections for affected employees will be processed for a basic pay adjustment. Each pay period within the reconstructed salary history will be compared with the corresponding pay period in the actual salary history. All periods in which the employee is overpaid will be offset by those periods, if any, that the employee was underpaid. The employee will receive any positive balance in the form of a lump sum payment in a subsequent pay period. Negative balances will be automatically waived.

6. If the application of the "new" change to lower level and repromotion rules (established June 13, 1992) results in the employee experiencing an immediate reduction in pay, the employee will be frozen in their current step until such time as the employee is scheduled to advance to the next higher step in accordance with the reconstructed step progression.

7. The parties will jointly develop a method to liquidate the newly created "APWU Fund" in an expeditious manner. The development of such liquidation procedures shall be governed by the principle of rapid payment at the lowest possible administrative cost.

8. The APWU hereby agrees to withdraw from the following cases which are pending national level arbitration: Grievance Nos. HOC-NA-C 2, HOC-NA-C 20, HOC-NA-C 34, and HOC-NA-C 40. This settlement is made without prejudice or precedent with regard to either party's position on the subject matters addressed herein.

Moe Biller
President
American Postal Workers
Union, AFL-CIO

Dated: July 21, 1994

Anthony J. Vegliante
Manager, Grievance & Arbitration
Labor Relations

Dated: 7/21/94

6/13/90

IN THE MATTER OF THE ARBITRATION	)	
	)	
Between	)	
	)	
AMERICAN POSTAL WORKERS UNION, AFL-CIO,	)	
	)	
and	)	Case No. H7C-NA-C 39
	)	
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO,	)	
	)	
and	)	
	)	
UNITED STATES POSTAL SERVICE.	)	

MEMORANDUM OF SETTLEMENT

1. The United States Postal Service (USPS), American Postal Workers Union, AFL-CIO (APWU) and the National Association of Letter Carriers, AFL-CIO (NALC) hereby agree to a full, final and binding resolution of the above-referenced national level grievance. All those grievance matters currently pending which specifically challenge the step placement of an affected employee who has been promoted to a higher grade and subsequently reassigned to the employee's former grade will be reviewed and resolved in accordance with this Memorandum of Settlement, except that separate issues in those cases not within the scope of this Settlement Agreement are to be handled by the parties in accordance with the usual grievance arbitration procedure.

2. As a consequence of the current promotion practice, some employees promoted from steps A, B and C (referred to herein as affected employees), in some pay periods receive less compensation than if they had not been promoted and had remained

in the former grade. To address this promotion pay anomaly, USPS, APWU and NALC agree 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.

3. Affected employees will be paid in accordance with the following principle:

> For each pay period following the promotion the employee's basic salary will be compared to the basic salary the employee would have received for that pay period if the employee had not been promoted. For those periods when the latter amount is higher the difference will be paid to the employee in a one-time lump sum payment.

Employees affected during the 1984-87 or 1987-90 National Agreements shall be paid a lump sum from a $80 Million fund established for this special purpose. APWU and NALC will work directly with USPS to develop a method to determine on a mutual basis which affected promoted employees will share in the fund, the amount of the lump sum payment for each employee and the timing of its issuance. It is intended that these one-time lump sum payments will satisfy all employee entitlements which arise

out of the employment relationship, including the 1984 and 1987 National Agreements due to the effects of the anomaly and this Memorandum of Settlement, as well as any possible FLSA payments; however, this document should not be construed as constituting any waiver of possible individual rights under that statute.

4. The USPS, APWU and NALC agree that promoted employees will continue to be placed in the grade level and step assigned in accordance with USPS's current practice with waiting time rules applied in accordance with current practice.

5. 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.

6. Promoted employees, whether promoted before or after the expiration of the 1987 National Agreement, who experience pay anomalies after the term of the 1987 National Agreement will be entitled to a remedy (or remedies) in accordance with the principles stated above. However, the parties agree that this

paragraph does not create any liabilities after the term of the 1987-90 National Agreement if promoted employees do not experience pay anomalies.

Dated at Washington, D.C. this 13th day of June 1990.

Moe Biller	Vincent R. Sombrotto	Joseph J. Mahon, Jr.
President, APWU	President, NALC	Assistant Postmaster General

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

July 17, 1996

JUL 1996

William Burrus
Executive Vice President
American Postal Workers Union, AFL-CIO
1300 L Street, N.W.
Washington, D.C. 20005-4107

Subject: Settlement of Pay Anomaly Overpayments

Dear Bill:

The parties recognize that approximately 468 employees were erroneously overpaid regarding payments for pay anomaly issues. In full and complete settlement of any and all issues in any forum arising out of such overpayments and subsequent collection efforts by the Postal Service the parties agree as follows:

1. Any monies collected by the Postal Service as of two weeks after the date of this settlement shall not be contested in any forum.

2. Any monies not already collected by the Postal Service as of two weeks after the date of this settlement will not be collected.

3. Any and all grievances arising out of pay anomaly over payment and application of ELM Section 460 are hereby withdrawn.

Please indicate your concurrence with the above terms by signing your name below.

Sincerely,

John W. Dockins
Labor Relations Specialist

William Burrus — 7-18-96
William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
Date

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

UNITED STATES POSTAL SERVICE
ROOM 9011
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4200
TEL (202) 268-3784
FAX (202) 268-3074

EMPLOYEE RELATIONS

COMPENSATION LETTER

Date:	March 26, 1993	Filing Number:	93-032

SUBJECT: Promotion Pay Anomaly Agreements

The purpose of this letter is to provide field human resources personnel with general information and a status report on the various promotion pay anomaly agreements.

Background

THE ANOMALY: In 1985, and again in 1991, as a result of binding arbitration, new steps AA, A, B, and C were added to most bargaining unit salary schedules. These new steps, with their longer waiting periods and larger step increase amounts, created a situation where a promoted employee could, at times, be paid at a lower rate than a similarly tenured employee who had not been promoted. The resulting difference in earnings has come to be referred to as a "promotion pay anomaly."

An example of the promotion pay anomaly is provided on pages 6-8.

THE REMEDY: As a result of this pay anomaly, the USPS reached agreement with the unions to provide for lump sum payments based on salary differences for the periods in which they occur. Two separate agreements have been made with three unions on the issue --one with the Joint Bargaining Committee (JBC) consisting of the APWU and the NALC, and another with the Mail Handlers Union. Both agreements address two issues:

1. Lump sum payments for promotion pay anomalies experienced from January 19, 1985, forward.

2. Revision of the bargaining unit Change-to-Lower-Level rule, and an addition of a Repromotion rule for those who are promoted back to a formerly held higher grade. ELM revisions reflecting these changes were issued in Postal Bulletin, PB 21817, dated June 11, 1992.

In addition to APWU, NALC, and Mail Handler employees, the USPS decided to grant a one-time lump sum payment to nonbargaining unit employees who, prior to accepting their nonbargaining unit positions, were affected by a pay anomaly but were not covered under their former union's agreement.

Current Status of the APWU\NALC Agreement

The June 13, 1990, agreement with the APWU\NALC established a fund from which the employees experiencing promotion pay anomalies between 1/19/85 and 11/20/90 would be paid lump sum payments. In order to be eligible for these payments, an affected employee had to have been on the rolls within the PS schedule on June 13, 1990.

The amount of payment for each affected individual was determined by identifying the periods of impact by the pay anomaly and calculating the difference between the biweekly straight-time base rate in the higher grade and the higher biweekly straight-time base rate he or she would have received in the lower grade. Each calculated amount was increased by 10%.

The bulk of the retroactive payments for the 1985 to 1990 period--to approximately 40,000 employees--was made on December 7, 1990, and December 20, 1991. We are currently processing a few remaining payments to employees whose salary histories required local office corrections. As soon as all payments have been completed, any remaining balance of the fund will be disbursed on a pro rata basis to those who previously received payments. Notification of these payments will be made at a future date.

Current Status of the Mail Handlers Agreement

The Mail Handler promotion pay anomaly agreement was signed on February 6, 1991. The calculation methodology differed from that of the APWU/NALC agreement in that payments were based on actual paid hours rather than an assumed 80 hours straight time per pay period. The result is that Mail Handlers received lump sum payments based on the paid hours, including overtime and premium pay, while the APWU/NALC method excluded these premiums. The eligibility requirement for the retroactive payment under this agreement was that an employee had to have been in the Mail Handlers pay schedule on February 8, 1991.

Payments for the retroactive period between January 19, 1985 and February 8, 1991 were made to affected Mail Handlers on June 7, 1991, and October 11, 1991. Approximately 780 Mail Handler represented employees received lump sum payments. All retroactive lump sum payments to affected Mail Handlers have been paid.

Current Status of Nonbargaining Payments

Payments for the retroactive period between January 19, 1985 and February 8, 1991 were made to affected nonbargaining unit employees on October 25, 1991 and December 20, 1991. Approximately 680 nonbargaining employees received lump sum payments.

Ongoing Payments

The APWU/NALC and Mail Handlers agreements also provided for additional lump sum payments for the period after 11/20/90 (APWU/NALC) or 2/8/91 (Mail Handlers). As a result, lump sum payments were issued on 12/31/92 to approximately 12,200 employees affected by the promotion pay anomaly under the 1990 National Agreements.

Notification of future promotion pay anomaly lump sum payments, along with bulletin board notices to employees, will be issued via the Postal Bulletin.

Change-to-Lower-Level/Repromotion Rule Changes

As noted in Postal Bulletin PB 21817 - June 11, 1992, both the APWU/NALC and the Mail Handler promotion pay anomaly agreements provided for the promulgation of new rules for employees who are changed to lower levels and for repromotions to grades formerly held. Employees being reassigned to a formerly held higher or lower grade, whether voluntarily or involuntarily, and irrespective of bargaining unit or job, will be placed in the step they would have been in, and assigned a next step date as if service had been continuous in the formerly held grade or the equivalent of the formerly held grade (see ELM Exhibit 418.1).

This differs from the former rules which, while basing the step placement on continuous service, determined the next step date on accumulated credit from the date of the last equivalent increase and imposed a "step penalty" if advancement to the next step would occur earlier than if service in that grade had been continuous. The new rules eliminate the complex "step penalty."

Procedures for change-to-lower-level actions to a grade not previously held are not substantially changed. However, because of the introduction of the new steps added to bargaining unit salary schedules effective July 13, 1991, employees hired prior to July 13, 1991, cannot as a result of a change to a new lower level be placed in the new steps. For these actions, the applicable step increment tables from the date of the career appointment/conversion will apply.

When an employee changes to a lower grade not formerly held, the ELM 422.252b (formerly 422.251b) continues to offer option (2) which allows a local management decision to assign ". . . any higher step in the lower grade which is less than one full step above the basic salary the employee held in the higher grade. . ." While there is no change in the ELM language regarding this option, it use should be limited to situations where management seeks to encourage employees to move into lower level positions.

For promotions to grades formerly held, or "repromotions," both the step placement and the next step date will be assigned as if the employee had remained continuously in the higher level, irrespective of bargaining unit or job. The repromotion rule was added to discourage employees from using the promotion and change-to-lower-level procedures to gain a pay advantage over their peers.

Credit for Quality Step Increases and penalties for step deferments, etc., that occurred in the former grade will be included in the determination of the step placement in the new grade regardless of whether the action is a promotion, repromotion or change-to-lower-level.

Local Personnel Office OPF Reviews

In the process of calculating lump sum payments for affected employees, we occasionally find salary history errors or inconsistencies. For as long as these anomalies continue to occur, your office may be receiving salary history printouts along with worksheets and instructions for reviewing the history, and for processing the necessary personnel actions. Your prompt attention to these reports will ensure that affected employees receive payments to which they are entitled.

DISCUSSION

You should also be aware of certain aspects of the promotion anomaly agreements about which we receive many questions.

1. Except for the addition of the above cited repromotion rule, the existing bargaining unit promotion rules have not changed. A new step waiting period will begin on the effective date of any promotion to a grade not formerly held. During the periods that any pay anomaly occurs, the affected employees will be entitled to the lump sum payments in accordance with the settlements. This situation will continue until the end of [redacted]

2. The Maintenance Craft retroactive promotion procedures under Article 38 of the National Agreement also have not changed. In many cases, because of the retroactivity of the promotion action, coupled with the extended step waiting periods in steps AA, A, B and C, the salary in the step assigned in the higher grade may be lower than the salary the employee was receiving at the time of the promotion. The affected employees will be compensated via the promotion pay anomaly remedy as described in I.

Employee Communications

Headquarters Compensation and Benefits will continue to coordinate communications on all promotion pay anomaly matters. Field management and affected employees will be informed of pending activities via the Postal Bulletin. Should field human resources management have any questions on the promotion pay anomalies, they should call Bob Kenestrick at (202) 268-4185. Any employee or local union questions on this matter should be handled by the local human resources personnel.

Dennis R. Weitzel
Manager
Compensation and Benefits

INTER
APWU
OFFICE

MEMO
MEMO

To: Moe Biller
From: Phillip Tabbita
Subject: Promotion Pay Overpayments
Date: December 21, 1995

The Service made an error in the computer program that calculates quarterly anomaly payments. The error has been fixed. However, the error resulted in overpayments to 450 employees totaling $237,945. In most cases the affected employees never experienced an anomaly loss.

Robert Kenestrick told me about the error several months ago. I did not know what, if anything, the Service intended to do about the error. Yesterday I started receiving calls from affected employee. The Service sent a letter to each of the employees telling them about the error and stating "Recovery of the overpayments(s) will be handled in accordance with normal payroll collection procedures for erroneous payment of pay."

I called Robert Kenestrick about the letter. He was surprised that I was unaware of the employee letter and the Service's plan to collect. Robert Kenestrick said he had thought Labor Relations would have sent notice to the

unions several weeks ago. Robert Kenestrick faxed to me a copy of the employee letter as well as the Management Memo he sent to the field. (Attached)

These overpayments are not related to any of our previous agreements with USPS on how to handle promotion pay overpayments. However, it has been the practice to waive all overpayments related to promotion pay - even in circumstances not covered by a specific agreement. Any protest over the collection of these overpayments could be left to the affected individuals and their local unions. However, we have some alternatives that we might pursue:

First, we could pursue discussions with the Postal Service seeking a general waiver of the overpayments.

Second, we could suggest that these overpayments go through alternative dispute resolution procedures. However, if we can not reach a general understanding on how to handle these overpayments, it may not make any sense to divert them from the normal procedures.

Third, we could obtain the list of affected individuals and write to them and their local unions explaining the

problem and advising them of various methods to protest the collection (waiver of overpayment, grievance, debt collection appeal).

MANAGEMENT MEMO
95-36

December 7, 1995

Compensation and Benefits Update 95-15

To: Manager, Human Resources (Area)
Manager, Human Resources (District)
Manager, Finance (Area)
Manager, Finance (District)

From: Compensation and Benefits, Headquarters

Subject: Promotion Pay Anomaly - Erroneous Lump Sum Payments

As a result of an error in the promotion pay anomaly system used to calculate quarterly lump sum payments, a number of employees have received payments to which they were not entitled. This applies only to certain employees who were promoted from new steps AA to steps A in the higher grade (e.g., promotion from grade 1, step AA to grade 2, step A). In most cases, such promotions are not affected by the anomaly.

The problem stems from the methodology in which anomaly payments must be calculated. Specifically, for each pay period following a promotion from steps AA, A, B and C, the employee's salary is compared to the salary s/he would have received in the lower grade if s/he had not been promoted. This requires the construction of a hypothetical salary history in the former grade from which to make these comparisons. However, in promotions from step AA, the hypothetical salary progression was discovered to be off by one step, thereby, generating an erroneous payment. There are approximately 450 affected employees having overpayments totaling $237,945.

Recovery of these overpayments will be handled in accordance with normal payroll collection procedures for erroneous payment of pay. On or about December 11, 1995, the Minneapolis Accounting Service Center will send letters (copy attached) directly to affected employees to explain the problem, and to indicate the amount of overpayment for each applicable quarterly payment since January 1993. Accounts Receivable Forms 1903-D will be sent out on or about December 15.

If there are questions, please call me at (202) 268-4185.

Bob Kenestrick
Compensation & Benefits
Human Resources

cc: Mr. Mahon
Ms. Sonnenberg
Mr. Porras
Mr. Weitzel

Attachment

LETTER TO EMPLOYEES

December xx, 1995

Subject: Promotion Pay Anomaly - Erroneous Lump Sum Payments

(Employee Name & Home Address)

As a result of an error in the promotion pay anomaly system used to calculate quarterly lump sum payments, you have received payments to which you were not entitled. The problem stems from the methodology in which anomaly payments must be calculated. Specifically, the promotion pay anomaly settlements require that for each pay period following a promotion from steps AA, A, B and C, the employee's actual salary will be compared to the salary s/he would have received in the lower grade if s/he had not been promoted. To make this comparison, a hypothetical salary history must be constructed to determine the salary progression in former grade. However, in promotions from step AA, the hypothetical salary progression was discovered to be off by one step, thereby, generating an erroneous payment.

Recovery of the overpayment(s) will be handled in accordance with normal payroll collection procedures for erroneous payment of pay. Within a week, you will be receiving further information from your office regarding this claim.

According to payroll records, the erroneous payments you received are as follows:

RELEVENT YR/PP	AMOUNT OF ORIGINAL PAYMENT	RECALCULATED PAYMENT	OVERPAYMENT

Human Resources

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 USPS against a current or former employee for the recovery of pay which 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

437.21 Pay. Pay means 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, life insurance premiums, health insurance premiums, or payment for travel, transportation, or relocation expenses.

437.22 Employee. Throughout part 437, employee means a *former* employee as well as a *current* employee.

437.23 Applicant. Applicant means 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.

437.24 Installation Head. Installation head means the postmaster, manager, or director of *field facilities* or the department head (or designee) of *Headquarters units* 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 USPS, if available, or a statement setting forth the date the erroneous payment was discovered.

c. A statement of the circumstances which the applicant feels would justify a waiver of the claim by the USPS.

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 which are *not* described, or incorrectly described, on the Form 3074 by the applicant.

b. An explanation of the cause of the overpayment.

c. If available, a listing for each pay period in which an overpayment was made (1) of 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 USPS should accompany the Form 3074. If neither of these items is available, a statement establishing the discovery date of the USPS claim should be included.

g. Copies of pertinent Forms 50, *Notifications of Personnel Action*; Forms 1303, *Salary Change Notices*; and any correspondence having a bearing on the claims should be obtained from the employee's official personnel folder and included with the Form 3074.

h. Any other information which would assist in making a determination of whether collection action to collect the claim would be against equity or good conscience and not be in the best interest of the USPS.

437.5 Review by Compensation Unit

The installation head forwards the Form 3074 to the appropriate compensation unit (i.e., the Field Division Supervisor of Compensation and Staffing, for field units, or Headquarters Personnel, for Headquarters and related units) which:

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 Director of the Minneapolis Postal Data Center (PDC).

437.6 Action by Postal Data Center (PDC)

The PDC will waive 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 USPS. Excluded from consideration for waiver of collection are overpayments resulting from errors in timekeeping, keypunching, machine processing of time cards or time credit, coding, and any typographical errors that are adjusted routinely in the process of current operations.

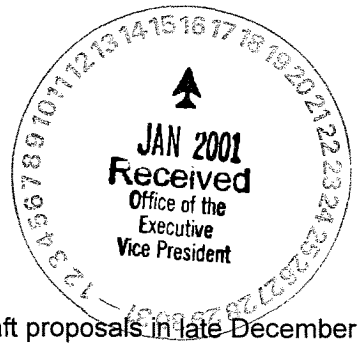
b. Everyone having an interest in obtaining a waiver acted reasonably under the circumstances, without any indication of fraud, misrepresentation, fault, or lack of good faith.

c. Collection of the claim would be against equity and good conscience and would not be in the best interest of the USPS.

ANTHONY J. VEGLIANTE
VICE PRESIDENT, LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

January 12, 2001



Mr. William Burrus
Executive Vice President
American Postal Workers Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20001-2196

Dear Bill:

Reference is made to our several telephone conversations and various draft proposals in late December as well as our January 9, 2001, meeting with respect to the December 29, 2000, Memorandum of Understanding (MOU) dealing with Salary Schedules 1 and 2.

As we agreed, the December 29, 2000, MOU was intended to reduce the perceived impact on employees in Steps B and C when slotting from Schedule 1 to Schedule 2, pursuant to the parties' October 8, 1999, Memorandum of Understanding concerning the Promotion Pay Anomaly. Furthermore, the parties also intended that the December 29, 2000, MOU would not provide any monetary windfall to those employees in steps D through H who will not be slotted into Schedule 2 on April 21; rather, they will remain in Schedule 1 until reaching Step I at which time they will be slotted to Step N (Grades 2, 3 and 4) or Step M (Grades 5, 6 and 7). At our January 9, meeting, we agreed that eligible PTF employees would receive the full cash payments while eligible PTR employees would receive pro-rated cash payments, consistent with the paid hour basis contained in Article 9.3.B of the1994 National Agreement. As we agreed, and as set forth in the introductory paragraph and in Section A of Attachment A of the December 29, 2000, MOU, there will be two cash payments for all eligible employees.

We also agreed that the parties would designate knowledgeable individuals at the national level as an administrative committee to resolve the three asterisked issues on page 2 of Attachment A associated with the implementation of the December 29, 2000, MOU. In that regard, the Postal Service intends to use the eligibility rules associated with the 1995 and 1997 cash payments with respect to the first eligibility rule (i.e., in a pay status in the pay period immediately preceding the payment effective date) found on page 2 of Attachment A.

On January 9, Phil Tabbita raised several technical issues with Don Develin and Bob Kenestrick concerning eligibility requirements for employees who were promoted or changed to a lower level. After discussions between representatives of the parties, it is clear that only those people who were promoted from Schedule 1 to Schedule 2 should be excluded from the cash payments. Those employees who are slotted to Schedule 2 and then promoted are, in fact, eligible for the cash payments. With respect to the lower grade issue, eligible employees include those who were changed to a lower level whether or not converted prior to the change to the lower level.

Finally, as the parties agreed, this most recent MOU fully and completely resolves any and all issues regarding the October 8, 1999, MOU concerning the Promotion Pay Anomaly.

Sincerely,

Anthony J. Vegliante

cc: Mr. Ward

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
202-268-7852
FAX: 202-268-3074

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES POSTAL SERVICE AND THE AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: Salary Schedules 1 and 2

The United States Postal Service ("Postal Service") and the American Postal Workers Union, AFL-CIO ("APWU") mutually agree that additional modifications regarding the conversion of certain employees to the new PS and MESC salary schedules created under the October 8, 1999 Memorandum of Understanding (MOU) Re: Promotion Pay Anomaly need to be accomplished.

The Postal Service and the APWU agree as follows:

1. This Memorandum of Understanding is applicable to only certain employees in PS and MESC grades 2 through 7.

2. Through April 7, 2001, Schedule-1 employees will continue to slot to the appropriate step in Schedule-2 in accordance with the Slotting Conversion Table (Attachment G of the October 8, 1999 MOU).

3. Effective April 21, 2001, those employees in PS and MESC grades 2 through 7, steps D through H, will remain in Schedule-1 until reaching step I, at which point they will slot into Schedule-2 at step N for grades 2, 3, and 4 and step M for grades 5, 6, and 7. All remaining employees in Schedule-1 will convert to Schedule-2 under the terms of the October 8, 1999 MOU.

4. APWU-represented employees in grades 2 through 7 who were slotted to the PS or MESC Schedule-2 from steps B and C in Schedule-1 on or before April 21, 2001 may be eligible for cash payments as set forth in the attached Cash Payment Schedule (Attachment A).

5. All rights and obligations of the parties concerning the subject matter of this Memorandum of Understanding shall be controlled by the terms of this Memorandum of Understanding. This Memorandum of Understanding represents an agreement between the Postal Service and the APWU to fully and completely resolve any and all issues regarding the October 8, 1999, MOU Re: Promotion Pay. Such issues include, but are not limited to, pending grievances or any proposals raised in 2000 collective bargaining that address promotion pay anomalies. Neither the Postal Service nor the APWU shall attempt to modify, add, or delete any of the terms of this Memorandum of Understanding during the dispute resolution

process, including interest arbitration proceedings, associated with the 2000 national negotiations. The parties will designate knowledgeable individuals at the national level who will resolve any issues dealing with the implementation of this Memorandum of Understanding.

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

Anthony J. Vegliante
Vice President
Labor Relations
U.S. Postal Service

Dated: December 29, 2000

CASH PAYMENT SCHEDULE

Cash payments, not to be included in basic pay, will be made to eligible employees in two annual installments. All payments are subject to legally required withholding and payroll taxes.

A. Full-Time Employees

Eligible non-probationary full-time employees will receive cash payments, not to be included in basic pay, as follows:

	2001 Payment	2002 Payment
Grade 2	$1,250	$1,250
Grade 3	$1,250	$1,250
Grade 4	$1,500	$1,500
Grade 5	$1,500	$1,500
Grade 6	$1,000	$1,000
Grade 7	$1,250	$1,250

The first payment (2001) will be made as soon as practicable following April 21, 2001.

The second payment (2002) will be made as soon as practicable following April 20, 2002.

The eligibility requirements for both cash payments will be determined by the terms of Section B below.

B. Eligibility Requirements

APWU-represented employees in grades 2 through 7 who are slotted to the PS or MESC Schedule-2 from steps B and C in Schedule-1 on or before April 21, 2001, as shown below, may be eligible for cash payments.

Grade	From Schedule-1, Step	To Schedule-2, Step
2	B	G
2	C	I
3	B	G
3	C	I
4	B	G
4	C	H
5	B	F
5	C	H
6	B	F
6	C	G
7	B	F
7	C	G

Employees are eligible for cash payments who are slotted as above and:

1) are in a pay status in the pay period immediately preceding the payment effective date, i.e., pay period 9-2001 (April 7 – April 20, 2001) for the first payment which will be in 2001 and pay period 9-2002 (April 6 – April 19, 2002) for the second payment which will be in 2002; and

2) are represented by the APWU in each of the twenty-six pay periods preceding the payment effective date, i.e., pay periods 10-2000 through 9-2001 (April 22, 2000 through April 20, 2001) for the first payment and pay periods 10-2001 through 9-2002 (April 21, 2001 through April 19, 2002) for the second payment.

Employees who are slotted as above are ineligible for cash payments if they:

1) received a subsequent step increase as a result of the Anomaly Fix, effective April 22, 2000; or

2) received a subsequent step increase as a result of a grievance, EEO, or court settlement; or

3) are subsequently promoted or changed to a lower grade from the grade in which the slotting occurred.

Ineligibility in the first payment year (2001) will preclude eligibility for the second payment year (2002).

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

RE: Annual Leave Exchange Option, Addendum

The parties acknowledge that due to the delay between acceptance and ratification of the 1998-2000 Collective Bargaining Agreement, eligible APWU bargaining unit employees covered by the November 20, 1998, Memorandum of Understanding (MOU) concerning Annual Leave Exchange Option, missed one opportunity to sell back a maximum of 40 hours of annual leave at the end of leave year 1998.

The parties agree that for the explicit purpose of correcting this situation, the MOU will be amended to apply the following specific agreement to APWU bargaining unit employees on a one-time basis:

1. The Annual Leave Exchange Option contained in the 1998-2000 Collective Bargaining Agreement will expire at midnight on the last day of leave year 1999.

2. APWU employees who are eligible under the criteria set forth in the Annual Leave Exchange Option MOU at the end of leave year 1999 will be allowed to sell back a maximum of 80 hours of annual leave.

3. The Union agrees to withdraw all grievances regarding Annual Leave Exchange.

4. This agreement is non-precedent setting and non-citable in any forum or for any purpose in the future.

Peter A. Sgro
Acting Manager
Contract Administration
APWU/NPMHU

Date 5/10/99

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

Date 5·11·99

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

May 19, 2000

Mr. Moe Biller
President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Moe:

Enclosed is your signed original copy of the Memorandum of Agreement, Re: Clarification of Regulations for National Day of Observance.

Sincerely,

Doug A. Tulino
Manager
Labor Relations Policies and Programs

Enclosure

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

MEMORANDUM OF AGREEMENT
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: Clarification of Regulations for National Day of Observance

The parties agree that the following procedures will apply to affected employees if the Postmaster General or designee determines that the Postal Service will participate in a National Day of Observation (e.g., National Day of Mourning), subsequent to the declaration of a National Day of Observance having been made by Executive Order of the President of the United States.

1. Full-time employees whose basic work week includes the National Day of Observance as a scheduled work day but who are not directed to report for work, will be granted administrative leave for that day.

2. Full-time employees whose basic work week includes the National Day of Observance as a scheduled work day, and who perform service, will be granted a day of administrative leave at a future date, not to exceed eight hours.

3. Full-time employees whose basic work week includes the National Day of Observance as a non-scheduled day and are not directed to report for work, will be granted a day of administrative leave at a future date.

4. If the National Day of Observance is a full-time employee's non-scheduled day and the employee is scheduled to work, the employee will receive overtime pay, plus up to eight hours of future administrative leave for the number of hours worked.

5. The same provisions apply to part-time regular employees as apply to full-time employees. The total hours of administrative leave should only equal the scheduled hours for the National Day of Observance, which may be less than eight hours. However, part-time regular employees whose basic work week includes the National Day of Observance as a non-scheduled work day and who are not directed to report for work on the National Day of Observance will be granted a day of administrative leave at a future date equal to the average number of daily paid hours in their schedule for the service week previous to the service week in which the National Day of Observance occurs, which may be less than eight hours.

6. Part-time flexible employees should be scheduled based on operational needs. Part-time flexible employees who work will be granted a day of administrative leave at a later date. The day of administrative leave will be based on the number of hours actually worked on the National Day of Observance, not to exceed eight hours. Part-time flexible employees who are not directed to work on the National Day of Observance will be granted administrative leave at a future date equal to the average number of daily paid hours during the service week previous to the service week in which the National Day of Observance occurs, not to exceed eight hours.

7. Transitional employees will only receive pay for actual work hours performed on the National Day of Observance. They will not receive administrative leave.

8. If an employee is on leave or Continuation of Pay on the National Day of Observance, the employee will be granted a day of administrative leave at a future date, not to exceed eight hours.

9. An employee on OWCP, AWOL, suspension or pending removal on the National Day of Observance will not be granted administrative leave. If the employee on AWOL, suspension or pending removal is returned to duty and made whole for the period of AWOL, suspension or removal, the employee may be eligible for administrative leave for the National Day of Observance if the period of suspension or removal for which the employee is considered to have been made whole includes the National Day of Observance. Such determination will be made by counting back consecutive days from the last day of the suspension or removal to determine if the employee had been made whole for the National Day of Observance.

10. Where provisions in this Memorandum of Agreement provide for a day of administrative leave to be taken at a future date, such leave must be granted and used within six months of the National Day of Observance or by the end of the Fiscal Year, whichever is later. However, administrative leave will not be granted to employees who are on extended leave for the entire period between the Day of Observance and six months from that date, or between the Day of Observance and the end of the Fiscal Year, whichever is later.

11. Administrative leave taken at a future date must be taken at one time.

12. Administrative leave to be taken at a future date may, at the employee's option, be substituted for previously scheduled but not used annual leave.

13. Administrative leave to be taken at a future date should be applied for by using the same procedures which govern the request and approval of annual leave consistent with Local Memoranda of Understanding.

Anthony J. Vegliante
Vice President
Labor Relations
U. S. Postal Service

Moe Biller
President
American Postal Workers
Union, AFL-CIO

Date: 5/4/00

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

February 22, 1996

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Dear Bill:

This will serve to further respond to your correspondence dated January 23 and follow up to your telecon with Donna Gill on February 13 regarding the Sick Leave for Dependent Care MOU. There is no dispute that this provision allows employees to use up to 80 hours of earned sick leave to care for family members. There is no requirement that employees use sick leave to cover such absences. It is incumbent upon the employee to submit a request for sick leave when he/she wants to be paid sick leave to cover such absences. The parties do not require the employee to use sick leave under such circumstances.

I hope this satisfactorily addresses your concerns.

Sincerely,

Anthony J. Vegliante
Manager
Contract Administration APWU/NPMHU

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

January 23, 1996

William Burrus
Executive Vice President
(202) 842-4246

Dear Tony:

This is to clarify the newly negotiate provisions in the Dependent Care Memorandum permitting an employee to use sick leave to care for a family member. The union interprets the use of sick leave as optional, pursuant to the determination by the employee. The intent of the Memorandum was that the use of sick leave to care for a family member is now consistent with postal rules, but the parties did not require the employee to use sick leave in such circumstances. In some circumstances, I can envision that an employee's absence is justified to care for a family member but the employee will elect not to use sick leave.

I am aware that the parties at the national level have a disagreement over the use of LWOP at the employee's option, but I view this issue as different in that the parties specifically provided in the newly negotiated language that "sick leave **may** be used". In addition, once the 80 hours have been exhausted, the employee is prohibited from using sick leave no matter their sick leave balance.

This is to determine if the employer agrees with the union's position that information provided to employees does not cause the initiation of grievances throughout the country.

Sincerely,

William Burrus
Executive Vice President

Anthony J. Vegliante
Grievance & Arbitration
475 L'Enfant Plaza, SW
Washington, DC 20260

cc: G. Bell

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

January 5, 1996

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Dear Bill:

This is in reference to your correspondence dated December 18 regarding sick leave for dependent care. Let me assure you that no one on my staff informed supervisors that sick leave for dependent care cannot be used for those absences covered by the Family and Medical Leave Act (FMLA). They were informed that there are absences covered by the sick leave for dependent care provisions that do not qualify as FMLA absences but when an absence is FMLA qualifying, there may be an overlap.

If you have any questions regarding this matter, please contact Donna Gill of my staff at 268-2373.

Sincerely,

Anthony J. Vegliante
Manager
Contract Administration, APWU/NPMHU

JAN 1996

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

December 18, 1995

Dear Tony:

I have received a number of inquiries concerning the application of the new contractual provision on the use of sick leave for dependent care and its application to the Family and Medical Leave Act. Several supervisors have informed local union officials that they were instructed in contract interpretation classes that employees could not use sick leave for the care of family members, if the employees absence is covered by the Family and Medical Leave Act.

This interpretation is contrary to the intent of the parties in negotiating the use of leave for dependent care. Employees whose absence is justified because of the medical condition of a family member that qualifies under the Family and Medical Leave Act may use up to 80 hours of their sick leave to cover such absence.

All absences that qualify under the newly negotiated dependent care provisions do not qualify under the Family and Medical Leave Act. Under the dependent care provisions, the family members condition is not required to meet the definition of a "serious health condition", however if the family members condition does meet the definition as required by FMLA, the employee is entitled to use sick leave for the absence.

Please provide written confirmation as to the employer's interpretation of the dependent care provisions as applied to absences under the Family and Medical Leave Act.

Sincerely,

William Burrus

Anthony J. Vegliante, Manager
Grievance & Arbitration Division
475 L 'Enfant Plaza, SW
Washington, DC 20260

UNITED STATES POSTAL SERVICE

RECEIVED
95 NOV -3 AM 8:44
PHILA
BULK MAIL
CENTER

November 01, 1995

MEMORANDUM FOR
JEAN D'AMICO
DENNIS ESTERLINE
JAMES GALLAGHER
PAT CORCORAN
JERRY CAPIE
CARL GAYLE

SUBJECT: SICK LEAVE FOR DEPENDENT CARE

Attached for your information are implementation guidelines for the new Memoranda of Understanding (MOUs) concerning Sick Leave for Dependent Care MOUs.

The memoranda are in effect for employees represented by the NALC and the APWU. The MOU with the NALC was effective August 19, 1995 (the date of the Stark Panel Award). The MOU with the APWU was effective October 01, 1995 (the date of the Clarke Panel Award).

If you have any questions regarding the MOUs contact Labor Relations.

Charles C. Polk II
Senior Labor
Relations Specialist

cc: A. Lariviere
D. O. Harris
H. White
Labor Relations Staff

P. O. Box 7956
PHILADELPHIA PA 19101-7956
(215) 895-8080
FAX: (215) 895-8079

all Direct Reports
Dist/Station
201
11-3-95
Dist Org

11/18/95
Jim Burke,
This is the District's position on the Sick Leave for Dependent Care. Have you been given a copy a copy. If not what is the APWU's position
Vince Tadeuci

SICK LEAVE FOR DEPENDENT CARE FOR EMPLOYEES REPRESENTED BY THE NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO (NALC) AND AMERICAN POSTAL WORKERS UNION, AFL-CIO (APWU)

1. Use of Earned Sick Leave

The new Memoranda of Sick Leave for Dependent Care (Memoranda or MOUs) provide that sick leave may be used by an employee to give care or otherwise attend to a family member with a medical condition which, if an employee had the same condition, would justify the use of sick leave. The sick leave that an employee is allowed to use under the MOUs is not additional sick leave; it is simply the earned sick leave that the employee has accrued under the Postal Service's regular sick leave policy as set forth in ELM section 513. However, there is a limit to the number of sick leave hours an employee can use for dependent care purposes under the MOUs; an employee can use no more than 80 hours of his or her earned sick leave within each leave year.

2. Defining a Dependent

Dependents under the MOUs are defined just as the Family Medical Leave Act (FMLA) defines them. Family members who qualify as dependents under the MOUs include son or daughter, parent, and spouse as defined in ELM section 515.2 (FMLA implementing regulations).

3. Approval of Sick Leave for Dependent Care

Approval of sick leave to care for a family member is the same as it is for approval of sick leave for the employee. (See ELM section 513). Therefore, the employee should normally submit a PS Form 3971 for approval in advance to the appropriate supervisor. To obtain approval of sick leave under the Memoranda, the employee must provide the following information in the remarks section of the PS Form 3971 or on an attachment thereto. First, that the sick leave is requested to care for or attend to a son, daughter, spouse, or parent. Second, the employee must specify the medical facts and provide the necessary explanation and/or documentation in support of the illness, incapacity, or other condition affecting the dependent in order for the supervisor to determine whether that same condition -- if afflicting the employee -- would warrant use of sick leave. Third, the employee must state the nature of his or her need to care for or attend to the dependent.

4. Documentation

In accordance with normal sick leave policy, medical documentation or other acceptable evidence of the medical need of the dependent is required in the following circumstances; when the employee is on restricted sick leave (ELM section 513.371); when it is deemed desirable by the supervisor for the protection of the Postal Service's interests (ELM section 513.361); when the sick leave is for extended periods (ELM section 513.363); or when the absence exceeds three days (ELM section 513.362). Documentation or explanation of the dependent's relationship to the employee may also be required. With regard to filing this documentation, supervisors have a responsibility to protect employees' dependents' privacy as well as the privacy of employees. If it is necessary to retain documentation containing restricted medical information for an employee's dependents, it is to be filed in the leave requester's medical file, unless the dependent is also an employee. Otherwise, such records should be returned to the employee or destroyed after necessary review.

In addition, such medical documentation or evidence of medical need is required when necessary to determine whether the FMLA applies to the employee's situation. Supervisors are reminded that they have an obligation to advise the employee of his or her FMLA rights if they become aware of circumstances which may trigger the FMLA, such as caring for a dependent

with a "serious health condition" (see ELM section 515). If such condition exists, it may invoke the protections of the FMLA.

5. Sick Leave for Dependent Care and the FMLA: Differences and Overlap

The FMLA entitles employees to time off for specified situations. Under the FMLA, the determination of whether the time off is paid or unpaid is left to the employer's leave policies. Allowing the use of sick leave for dependent care is a new policy available to all employees in NALC and APWU represented positions.

FMLA coverage for an absence depends on the employee's eligibility and the reason for the absence. Sick leave for dependent care may or may not be covered by the FMLA, the same as sick leave for an employee's illness may or may not be covered by the FMLA. Unless the employee's situation meets the FMLA criteria, it is not an FMLA covered absence. Under the MOUs, it is not necessary that sick leave be used for a serious health condition, as it is under the FMLA.

The definition for a dependent in the MOUs is the same that is defined in the FMLA.

6. Corrective Action for Irregular Attendance

The MOUs do not diminish the employee's obligation to maintain regular attendance. Irregularities in attendance can be the basis for corrective action, including discipline. However, absences which qualify under the FMLA cannot be considered in any determination to take disciplinary action.

UNITED STATES POSTAL SERVICE

May 17, 1994

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This is in response to your April 20 inquiry regarding the eligibility of postal employees to use leave donated under the Leave Sharing Program for absences authorized under the Family and Medical Leave Act.

Employees who suffer serious personal health conditions and who are eligible for coverage under the Family and Medical Leave Act may participate in the Leave Sharing Program (LSP). However, eligibility is not automatic in that the employee must qualify under the current provisions of the LSP. For example, donated leave would not be available to employees who may qualify for FMLA before they exhaust their earned/unused sick and annual leave balances and accumulate 80 hours or more of leave without pay due to the serious health condition. Also, an employee may be eligible for coverage under FMLA but may be excluded from the LSP because he/she is a noncareer employee.

This is certainly consistent with existing leave policies and with our viewpoint that employees need our support and consideration when confronted with serious illnesses. If you have any further questions, please contact Corine T. Rodriguez at (202) 268-3823.

Sincerely,

for Sherry A. Cagnoli
Manager
Contract Administration (NALC/NRLCA)
Labor Relations

475 L'Enfant Plaza SW
Washington DC 20260

UNITED STATES
POSTAL SERVICE

April 12, 1994

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This is in response to your March 9 correspondence concerning the need for uniform responses to Family and Medical Leave Act (FMLA) questions. Enclosed for your review is Attachment 1, the responses we prepared for your questions as well as Attachment 2, additional questions and answers which have arisen since our last meeting.

The responses represent our best efforts to provide guidance and information to all our employees so that workplace relationships are not dissolved while workers attend to pressing family health obligations or their own serious illness. If you have any questions concerning our answers or if you would like to discuss them, please call Corine T. Rodriguez of my staff at (202) 268-3823.

I appreciate your help and cooperation in this matter.

Sincerely,

Sherry A. Cagnoli
Manager
Contract Administration (NALC/NRLCA)
Labor Relations

Enclosures

475 L'Enfant Plaza SW
Washington DC 20260

1. What certification is required for employees requesting FMLA because of the birth or placement of a son or daughter and in order to care for such son or daughter after birth:

   The required information is:

   a) That the employee is the parent.

   b) Date of birth or placement of this son or daughter.

   Note: There are no specified optional forms which the supervisor must accept. Optional forms are acceptable only if they are completed with sufficient detail (as described in 825.306).

2. Is medical certification required for the birth or placement of a son or daughter?

   No medical certification is required for the placement or to care for a son or daughter who does not have a serious health condition.

   825.302(c)

   Medical certification is required if the mother is requesting time off because of the pregnancy.

   825.114

3. Can an employee use intermittent leave or work a reduced schedule for the birth or placement of a son or daughter or to care for a newborn son or daughter?

   Yes, but only with the agreement of the employer.

   825.203

4. Can an employee use intermittent leave or work a reduced schedule because of pregnancy or the serious health condition of a newborn child?

Yes, when medically necessary due to the mother's pregnancy or the newborn child's serious health condition. The employer may require a certification from the health care provider that such leave is medically necessary and the expected duration and schedule of such leave.

825.117

5. 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?

   No, provided proper medical certification has been provided. (The employee must attempt to schedule their leave so as not to disrupt the employer's operation and may be assigned to an alternative position with equivalent pay and benefits that better accommodates the intermittent or reduced leave schedule.)

   825.203 and 825.117

6. Are employees entitled to FMLA if their absence is required during procedures intended to induce pregnancy, i.e., in-vitro fertilization and other insemination procedures.

   Yes, as certified by the attending physician.

   825.114c and 825.114 (3)

7. Is treatment for substance abuse covered as a serious health condition?

   Yes, if certified by the medical care provider as a serious health condition.

   825.114

8. Is an employee required to provide medical documentation for each absence after a medical provider has certified that the employee is receiving continuing treatment?

   No, but the employer may request certification if there is reason to question the appropriateness of the leave or its duration. An employer may request recertification of medical conditions to support leave requests at any reasonable interval, but not more often than every 30 days, unless:

   a) The employee requests an extension of leave.

   b) Circumstances have changed significantly from the original request.

   c) The employer receives information that casts doubt upon the continuing validity of the certification.

   d) The absence is for a different condition or reason.

   825.305(b) and 825.308

9. Does the employee have the option of using LWOP in conjunction with annual or sick leave for FMLA?

   Yes, subject to the approval of the leave in accordance with normal leave approval procedures.

   825.208 and Article 10, section 6

10. Can an employee be disciplined or receive other administrative action for absences covered by the FMLA?

    No. However, if the absence exceeds more than 12 weeks as authorized by FMLA, an employee could be subject to disciplinary action or other administrative action.

    825.220(c)

11. What can an employer do if it questions the adequacy of a medical certification?

    If the certification includes the required information, the employer may require the employee to obtain a second medical opinion at the employer's expense. The second health care provider may not be employed on a regular basis by the employer.

    825.307 and 825.308

12. Is advance written notice required for employees' use of FMLA?

    Not in the case of unexpected emergencies. In such cases, the employee should provide notice by telephone, telegraph, FAX or other electronic means. Additional information must be provided when it can readily be accomplished as a practical matter.

    825.302 and 825.303

13. Can properly submitted FMLA requests be denied because of operational reasons?

    No. If the absence is otherwise justified under FMLA, the leave cannot be denied. (When the necessity for leave is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than 30 days' notice as practicable. If the necessity for leave is based on planned medical treatment the employee shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer and shall provide the employer with not less than 30 days notice, as practicable.

    825.100, 825.112, 825.203 and PL 103-3 Section 102(e)

14. If an employee provides notice of the need for FMLA leave, what information must the employer provide to the employee?

    a) Whether or not the leave will be counted against the FMLA entitlement.

b) Any requirements for the employee to furnish medical certification and the consequences of failing to do so.

c) The employee's right to use annual, sick leave, or LWOP.

d) Any requirement for the employee to make health benefit payments and the arrangements for making such payments.

e) Any requirement for the employee to present a fitness-for-duty certificate to be restored to employment.

f) The employee's right to restoration to the same or an equivalent job upon return from leave.

g) The employee's potential liability for payment of health insurance premiums paid by the employer if the employee fails to return to work.

Attachment 2

FAMILY AND MEDICAL LEAVE (FMLA)
QUESTIONS & ANSWERS

Q. Can an FLSA exempt employee now take leave in less than full day increments?

A. Only if the time off is due to reasons covered by FMLA. Charging an FLSA exempt employee a partial day of leave for any other reason is a violation of the Fair Labor Standards Act.

Q. How are the 12 weeks of FMLA tracked?

A. By the leave request forms (3971) maintained for two years. When a leave is requested for a condition covered by FMLA, the supervisor writes FMLA in the form's remarks section. In most cases it will be pretty obvious to the supervisor when an employee is getting close to 12 weeks. When questions arise, the supervisor may have to review the request forms submitted by the employee since the start of the leave year.

Q. Must the employee state the leave is FMLA?

A. No, leave requested for a covered condition is part of the 12 workweeks provided by the FMLA policy. When an employee requests leave for a covered condition, the supervisor should note "FMLA" in the request form's remarks section, and give the employee the required notice.

Q. I am having trouble getting a baby sitter on Saturdays and need to be off every other Saturday to care for my 5 month old baby. Can I take family leave every other Saturday for that purpose?

A. Leave requested to care for your child, other than for medical reasons, may be taken on an intermittent basis only with your supervisor's approval. (ELM 516.61.)

Q. When may a supervisor deny or delay leave requested for a condition covered by family leave?

A. When less than 30 days' notice, or as much notice as practical under the circumstances, is given. Another situation is when leave requested on an intermittent or

reduced schedule because of the birth and care of the newly born child, or because of the placement of a child with the employee. Such leave is approved based on the employee's need, Postal Service need, and costs to the Postal Service. (ELM 515.51 and 515.61.)

Q. Is FMLA in addition to sick and annual leave?

A. FMLA is in addition to annual or sick leave that is taken for reasons not covered by FMLA. FMLA does not provide for additional sick or annual leave. It merely provides up to 12 workweeks absence for covered conditions. During such absence either annual, sick or LWOP is taken by the employee depending on the reason for the absence, and the employee's leave balances.

Q. Can a step increase be deferred as a result of FMLA?

A. It can happen, but is not likely. There is a maximum of 12 weeks during a leave year for leave taken as FMLA. An employee must have 13 weeks of LWOP during the step increase wait period for a step increase to be deferred. I should mention that the Family and Medical Leave Act does not require accrual of any rights or benefits during a period of leave.

Q. Do employees retain the no-layoff protection when FMLA interrupts the 20 pay periods worked per year during the six year period of continuous service?

A. Yes. However, since the maximum FMLA time off is 12 weeks or 6 pay periods per leave year, loss of the no-layoff protection would normally be for other reasons. The only time FMLA would interrupt the years required for protection is in cases where more than 12 weeks of FMLA during two different "leave" years result in more than 6 pay periods of absence during an individual employee's "anniversary" year. In these rare cases the no-layoff protection must manually be restored. This is accomplished by sending a memorandum to the Minneapolis Information Service Center.

UNITED STATES POSTAL SERVICE Cert P417 403 829

March 31, 1994

Mr. Vincent R. Sombrotto
President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2196

Mr. Moe Biller
President
American Postal Workers Union,
AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Gentlemen:

Enclosed is a draft revision of the notice given to employees who request leave for conditions covered by the Family and Medical Leave Act. The notice has been modified in accordance with comments received since its implementation in August 1993. The modifications are in bold type and they have been revised to include that sick leave is available under certain conditions to care for family members with a contagious disease.

As you know, additional changes may be required upon the issuance of the Department of Labor's (DOL) final regulations which are scheduled for publication in August 1994.

Should there be any questions concerning this matter, please contact Corine T. Rodriguez at (202) 268-3823.

Sincerely,

Sherry A. Cagnoli
Manager
Contract Administration (NALC/NRLCA)
Labor Relations

Enclosure

475 L'Enfant Plaza SW
Washington DC 20260

Attachment 2

FAMILY AND MEDICAL LEAVE (FMLA) QUESTIONS & ANSWERS

Q. Can an FLSA exempt employee now take leave in less than full day increments?

A. Only if the time off is due to reasons covered by FMLA. Charging an FLSA exempt employee a partial day of leave for any other reason is a violation of the Fair Labor Standards Act.

Q. How are the 12 weeks of FMLA tracked?

A. By the leave request forms (3971) maintained for two years. When a leave is requested for a condition covered by FMLA, the supervisor writes FMLA in the form's remarks section. In most cases it will be pretty obvious to the supervisor when an employee is getting close to 12 weeks. When questions arise, the supervisor may have to review the request forms submitted by the employee since the start of the leave year.

Q. Must the employee state the leave is FMLA?

A. No, leave requested for a covered condition is part of the 12 workweeks provided by the FMLA policy. When an employee requests leave for a covered condition, the supervisor should note "FMLA" in the request form's remarks section, and give the employee the required notice.

Q. I am having trouble getting a baby sitter on Saturdays and need to be off every other Saturday to care for my 5 month old baby. Can I take family leave every other Saturday for that purpose?

A. Leave requested to care for your child, other than for medical reasons, may be taken on an intermittent basis only with your supervisor's approval. (ELM 516.61.)

Q. When may a supervisor deny or delay leave requested for a condition covered by family leave?

A. When less than 30 days' notice, or as much notice as practical under the circumstances, is given. Another situation is when leave requested on an intermittent or

reduced schedule because of the birth and care of the newly born child, or because of the placement of a child with the employee. Such leave is approved based on the employee's need, Postal Service need, and costs to the Postal Service. (ELM 515.51 and 515.61.)

Q. Is FMLA in addition to sick and annual leave?

A. FMLA is in addition to annual or sick leave that is taken for reasons not covered by FMLA. FMLA does not provide for additional sick or annual leave. It merely provides up to 12 workweeks absence for covered conditions. During such absence either annual, sick or LWOP is taken by the employee depending on the reason for the absence, and the employee's leave balances.

Q. Can a step increase be deferred as a result of FMLA?

A. It can happen, but is not likely. There is a maximum of 12 weeks during a leave year for leave taken as FMLA. An employee must have 13 weeks of LWOP during the step increase wait period for a step increase to be deferred. I should mention that the Family and Medical Leave Act does not require accrual of any rights or benefits during a period of leave.

Q. Do employees retain the no-layoff protection when FMLA interrupts the 20 pay periods worked per year during the six year period of continuous service?

A. Yes. However, since the maximum FMLA time off is 12 weeks or 6 pay periods per leave year, loss of the no-layoff protection would normally be for other reasons. The only time FMLA would interrupt the years required for protection is in cases where more than 12 weeks of FMLA during two different "leave" years result in more than 6 pay periods of absence during an individual employee's "anniversary" year. In these rare cases the no-layoff protection must manually be restored. This is accomplished by sending a memorandum to the Minneapolis Information Service Center.

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

NOV 15 1993

Dear MR BURRUS

This is in response to your request for an advisory opinion under the Family and Medical Leave Act of 1993 (FMLA) regarding mandatory "modified" or "light duty" job programs for temporarily disabled employees.

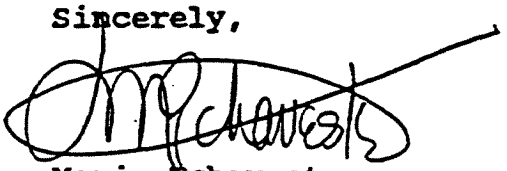
You ask if an employer can require a temporarily disabled "eligible employee," who seeks FMLA leave for a serious health condition that makes the employee unable to perform the employee's position, to accept an alternative position (with similar pay and benefits) that has been modified to eliminate the essential functions which the employee cannot perform. If so, you ask if the employer can deny the requested FMLA leave and require the employee's presence at work in the modified job.

The FMLA Regulations, 29 CFR Part 825, at § 825.702(d), provide that if FMLA entitles an employee to leave, an employer may not, in lieu of FMLA leave entitlement, require the employee to take a job with a reasonable accommodation. Thus, an employer could not require an employee to work in a restructured job instead of granting the employee's FMLA leave request in the example you posed in your inquiry.

FMLA does not prohibit an employer from accommodating an employee's request to be restored to a different shift, schedule, or position which better suits the employee's personal needs on return from leave [see § 825.215(e)(4)], but the employee cannot be induced by the employer to accept a different position against the employee's wishes.

As noted in your letter, § 825.204 of the regulations addresses temporary transfers to alternative positions with equivalent pay and benefits for employees who request intermittent leave or leave on a reduced leave schedule for planned medical treatment, including for a period of recovery from a serious health condition.

Sincerely,



Maria Echaveste
Administrator

NOTICE FOR EMPLOYEES REQUESTING LEAVE FOR CONDITIONS COVERED BY THE FAMILY AND MEDICAL LEAVE POLICIES

I. Qualifying Conditions

The Postal Service Family and Medical Leave policies provide that employees meeting the eligibility requirements must be allowed to take time off for up to 12 workweeks in a leave year for the following conditions:

(1) Because of the birth of a son or daughter (including prenatal care), or to care for such son or daughter. Entitlement for this condition expires 1 year after the birth.
(2) Because of the placement of a son or daughter with you for adoption or foster care. Entitlement for this condition expires 1 year after the placement.
(3) In order to care for your spouse, son, daughter, or parent who has a serious health condition. Also, in order to care for those who have a serious health condition and who stand in the position of a son or daughter to you or who stood in the position of a parent to you when you were a child.
(4) Because of a serious health condition that makes you unable to perform the functions of your position.

II. Eligibility

To be covered by these policies, you must have been employed by the Postal Service for a total of at least 1 year and must have worked a minimum of 1,250 hours during the 12-month period before the date your absence begins.

III. Type of Leave

Time off taken under these policies is counted toward the 12 workweeks allowed by the Family and Medical Leave Act; however, this is not a separate type of leave, but is charged to annual leave, sick leave, and/or LWOP in accordance with current leave policies. Note that sick leave is available only for your own health condition and **for exposure to, or caring for, a family member with a contagious disease ruled as requiring isolation, quarantine, or restriction of movement of the patient for a particular period by the health authorities having jurisdiction. Sick leave** cannot be used to care for others **except under these conditions.**

IV. Documentation

Supporting documentation is required for your leave request to receive final approval. **Documentation requirements may be waived in specific cases by your supervisor.**

- For condition (1) or (2), you must provide the birth or placement date.
- For condition (3), you must provide documentation from the health care provider stating the date the serious health condition began, probable duration of the condition, and appropriate medical facts. You must also provide documentation of when you are needed to provide the care or psychological support.

(CONTINUED)

o For condition (4), you must provide documentation from the health care provider stating the date the serious health condition began, probable duration of the condition, appropriate medical facts.

o If the time off requested is to care for someone other than a biological parent or child, appropriate explanation of the relationship may be required.

Supporting information that is not provided at the time the leave is requested must be provided within 15 days, unless this is not practical under the circumstances. If the Postal Service questions the adequacy of a medical certification, a second or third opinion may be required and the Postal Service will pay for these opinions.

If the absence is due to your own health condition and exceeds 21 calendar days, you must submit evidence of your ability to return to work before you will be allowed to return. Also, during your absence, you must keep your supervisor informed of your intentions to return to work and status changes that could affect your ability to return. Failure to provide information can result in the denial of family and medical leave under these policies.

V. Benefits

Health Insurance - To continue your health insurance during your absence, you must **continue to** pay the "employee portion" of the premiums. This ~~will~~ continues to be withheld from your salary while you are in a pay status. If the salary for a pay period does not cover the full employee portion, you ~~will be~~ **are** required to make the payment. If this occurs, you will be advised of the procedures for payment.

Life Insurance - Your basic life insurance is free and continues. If you are in a LWOP status for more than a year, this coverage is discontinued; ~~however~~ **in this case**, you ~~will~~ have the option to convert to an individual policy. If you have optional life insurance coverage, it continues. Your premium payments ~~will~~ continue to be withheld from your pay check. If you are in a nonpay status, your optional insurance coverage continues without cost for up to 12 months. Thereafter you can convert this coverage to an individual policy.

Flexible Spending Accounts (FSAs) - If you participate in the FSA program, see your employee brochure for the terms and conditions of continuing coverage during leave without pay.

VI. Return to Duty

At the end of your leave, you will be returned to the same position you held when the absence began (or a position equivalent to it), provided you are able to perform the functions of the position and would have held the position at the time you returned if you had not taken the time off.

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

May 22, 1990

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Dear Bill:

This letter is in response to your April 20 correspondence regarding "denying PTF employees leave during a week which includes a holiday."

Pursuant to Section 512.523b of the Employee and Labor Relations Manual, the policy for granting PTF leave is as follows:

"Part-time flexible employees who request leave on days that they are scheduled to work, except legal holidays, may be granted leave provided they can be spared. Leave which is charged to these employees cannot exceed 8 hours on any 1 day. The installation head may also consider a request for annual leave on any day a part-time flexible is not scheduled to work."

If you have any further questions regarding this matter, please contact Patricia Connelly of my staff at 268-3842.

Sincerely,

Joe Mahon

Joseph J. Mahon, Jr.
Assistant Postmaster General

American Postal Workers Union, AFL-CIO
1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

April 20, 1990

Dear Mr. Mahon:

By letter of January 30, 1989, I requested the USPS interpretation of denying PTF employees leave during a week which includes a holiday. I was subsequestly requested to provide a copy of a local policy as an example. I have been unable to locate a written local policy. However, the inquiry of my letter is still applicable.

Please provide a written response as to the employer's position on this subject.

Sincerely,

William Burrus
Executive Vice President

Joseph J. Mahon, Jr.
Asst. Postmaster General
U.S. Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

WB:rb
opeiu#2
afl-cio

American Postal Workers Union, AFL-CIO
1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

January 30, 1989

Dear Mr. Mahon:

This is in regard to the Memorandum of Understanding on maximizing the number of full-time employees and the requirement to work 39 or more hours per week for a 6-month period.

The parties have agreed that approved leave is credited for the required 39 hours. Recently, I learned that the payroll centers have instituted a policy of refusing to pay PTFs for approved leave in any week that includes a holiday, if the PTF has 32 hours or more of work hours or a combination of work and leave hours prior to the request for leave.

Example: Employee has 32 work hours and requests eight hours of leave. Such leave is approved at the installation level but is automatically rejected by the payroll center because a holiday falls within that week. The same results would occur if the PTF's hours included 24 work hours and eight hours leave prior to the subsequent leave request.

A review of the Employee and Labor Relations Manual reveals that the only exception for leave payment which is otherwise approved is on a legal holiday. This language does not deny payment for leave on days in a week that includes a holiday if such request is not for the holiday.

The immediate impact of the policy is to disqualify employees who would otherwise qualify for the maximization requirements. However, the policy also denies the payment of approved leave.

The Union does not find support for this policy in any regulation or contract language and requests the employer's justification for its implementation.

Sincerely,

William Burrus
Executive Vice President

Joseph J. Mahon
Asst. Postmaster General
U.S. Postal Service
475 L"Enfant Plaza, SW
Washington, DC 20260-4100

WB:rd

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

May 1, 1997

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Dear Bill:

This letter is in response to your correspondence dated February 27, 1997, concerning the application of donated leave to periods of LWOP and receive payment. You indicated that in Des Moines, the Data Center has refused to apply donated leave retroactively and instead has retroactively deducted earned sick leave accumulated after the employee's return to duty.

There is no disagreement between the parties over the right of employees to apply donated leave retroactively to a period of authorized absence. The Des Moines issue was investigated and a PS Form 2240 has been generated in order to credit the employee's leave retroactively.

If there are any questions concerning this matter, you may contact Barbara L. Phipps of my staff at (202) 268-3834.

Sincerely,

Peter A. Sgro
Acting Manager
Contract Administration APWU/NPMHU

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

6

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

February 27, 1997

Dear Tony:

In the implementation of the Leave Sharing agreement, the parties have agreed that employees who have been donated leave may apply the leave to periods of LWOP and receive payment. In at least one case eminating from DesMoines, the Data Center has refused to apply the donated leave retroactively and instead has retroactively deducted earned sick leave accumulated after the employees return to duty.

This is to determine if there is a disagreement between the parties over the right of employees to apply donated leave retroactively to a period of authorized absence.

Thank you for your attention to this matter.

Sincerely,

William Burrus
Executive Vice President

Anthony J. Vegliante, Manager
Grievance & Arbitration Division
475 E'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

UNITED STATES POSTAL SERVICE

May 17, 1994

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This is in response to your April 20 inquiry regarding the eligibility of postal employees to use leave donated under the Leave Sharing Program for absences authorized under the Family and Medical Leave Act.

Employees who suffer serious personal health conditions and who are eligible for coverage under the Family and Medical Leave Act may participate in the Leave Sharing Program (LSP). However, eligibility is not automatic in that the employee must qualify under the current provisions of the LSP. For example, donated leave would not be available to employees who may qualify for FMLA before they exhaust their earned/unused sick and annual leave balances and accumulate 80 hours or more of leave without pay due to the serious health condition. Also, an employee may be eligible for coverage under FMLA but may be excluded from the LSP because he/she is a noncareer employee.

This is certainly consistent with existing leave policies and with our viewpoint that employees need our support and consideration when confronted with serious illnesses. If you have any further questions, please contact Corine T. Rodriguez at (202) 268-3823.

Sincerely,

for Sherry A. Cagnoli
Manager
Contract Administration (NALC/NRLCA)
Labor Relations

475 L'Enfant Plaza SW
Washington DC 20260

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

June 22, 1999

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This is in response to your June 7 correspondence concerning the May 28 notice of changes to the Employee and Labor Relations Manual (ELM) Subchapter 510 Leave, section 514.22 and 514.22c.

After a meeting held on June 19 to discuss those changes, revisions were made that we believe address your concerns. Enclosed is a copy of the language that will be included in the next publication of Issue 14 of the ELM.

Should you have any questions or concerns, please call Corine Rodriguez of my staff at (202) 268-3823.

Sincerely,

Charles E. Baker
Acting Manager
Labor Relations Policies and Programs

Enclosure

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

the employee received salary or leave payments from another federal agency.

513.83 Separation by Death

If an ill employee dies without returning to duty and without making application for sick leave, the postal official who is in charge of the installation grants sick leave for the period of illness or disability immediately prior to death. If the employee was in pay status on the day of death or immediately prior to death, the employee's beneficiary is entitled to receive compensation without charge to leave for the date of death. The latter applies whether or not employees have leave to their credit.

513.9 Collection for Unearned Sick Leave

Collection for used but unearned sick leave at the time of separation is made in the same manner as for unearned annual leave (~~s~~See 512.72).

514 Leave Without Pay (LWOP)

514.1 Definitions

The following definitions apply for the purposes of the section:

a. LWOP is an authorized absence from duty in a nonpay status.

b. LWOP may be granted upon the employee's request and covers only those hours which the employee would normally work or for which the employee would normally be paid.

c. LWOP is different from AWOL (absent without leave), which is a nonpay status due to a determination that no kind of leave can be granted either because (1) the employee did not obtain advance authorization or (2) the employee's request for leave was denied.

514.2 Policy

514.21 Restriction

LWOP in excess of 2 years is not approved unless specifically provided for in postal policy or regulations.

514.22 Administrative Discretion

Each request for LWOP is examined closely and a decision is made based on the needs of the employee, the needs of the ~~USPS~~Postal Service, and the cost to the ~~USPS~~Postal Service. The granting of LWOP is a matter of administrative ~~discretion. It~~discretion and is not granted on the employee's demand except ~~that:~~ as provided in collective bargaining agreements or as follows:

a. A disabled veteran is entitled to LWOP, if necessary, for medical treatment.

b. A Reservist or a National Guardsman is entitled to LWOP, if necessary, to perform military training duties under the Vietnam Era Veterans' Readjustment Act of 1974. (See 38 U.S.C., section 2024).

c. An employee who requests and is entitled to time off under 515, Absences for Family Care or Serious Health Problem of Employee, must be allowed up to a total of 12 workweeks of absence within a Postal Service leave year for one or more reasons listed in 515.41. ~~Leave without pay may be taken in combination with annual or sick leave for which the employee is qualified.~~

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Re: Case No. Q90C-4Q-C 95048663
Washington, DC - Headquarters

Recently, you met with Postal Service representatives to discuss the above-captioned grievance, currently pending national level arbitration.

This grievance concerns the effect of the Memorandum of Understanding (MOU) concerning "Paid Leave and LWOP" found on page 312 of the 1998 National Agreement.

The parties hereby reaffirm the attached Memorandum of Understanding dated November 13, 1991, which serves as the parties' further agreement on the use of paid leave and LWOP.

We further agree that:

1. 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.

2. 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 Employee (policies to comply with the Family and Medical Leave Act).

3. 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. As we have previously agreed, 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.

With the above understandings, which shall apply to currently pending timely grievances and those filed in the future, we agreed to settle this grievance. Please sign below as acknowledgment of your agreement to resolve this grievance, removing it from the pending national arbitration listing.

Pete Bazylewicz
Manager
Grievance and Arbitration

William Burrus
Executive Vice President
American Postal Workers'
Union, AFL-CIO

Date: 4-20-99

Attachment

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

The undersigned parties negotiated a Memorandum of Understanding (MOU) entitled "LWOP in Lieu of SL/AL" that allows an employee to request Leave Without Pay (LWOP) prior to exhausting annual or sick leave. The following serves as a guide for administering these newly negotiated MOU provisions.

The basic intent of this MOU is to establish that an employee need not exhaust annual or sick leave prior to requesting LWOP. One example of the term "need not exhaust" is when an employee requests maternity or paternity leave and was previously required by local management to exhaust their sick or annual leave prior to receiving LWOP. An employee now has the option of requesting LWOP in lieu of sick or annual leave prior to reaching the point where they may exhaust their leave benefits.

It was not the intent of this MOU to increase leave usage (i.e. approved time off). Moreover, it was not the intent that every or all instances of approved leave be changed to LWOP thus allowing the employee to accumulate a leave balance which would create a "use or lose" situation. Furthermore, 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.

This MOU does not change Local Memoranda of Understanding regarding procedures for prescheduling annual leave for choice or nonchoice vacation periods. It also was not intended to provide employees the opportunity to preschedule LWOP in lieu of annual leave for choice or nonchoice periods. An employee may at a later date request to change the prescheduled annual leave to LWOP, subject to supervisor approval in accordance with normal leave approval procedures. However, this option is available to an employee only if they are at the point of exhausting their annual leave balance.

This MOU does not establish a priority between incidental requests for annual leave or LWOP when several employees are simultaneously requesting such leave. The normal established local practice prevails, i.e., whether leave requests are approved in order of seniority or on a first come first serve

basis or other local procedure. This memorandum of understanding has no effect on any existing leave approval policies or other leave provisions contained in the Employee and Labor Relations Manual or other applicable manuals and handbooks.

William J. Downes
Director
Office of Contract
Administration
Labor Relations Department
U.S. Postal Service

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

11-13-91
Date

for nonretiree veterans, using SF 813, for Retirement, Thrift Savings Plan, and Reduction in Force (RTR) purposes.

. . .

512.5 Leave Charge Information

. . .

512.52 Part-Time Employees

. . .

512.5221 Part-Time Regular

A part-time employee who is granted annual leave and performs service on the same ~~duty~~ day is not allowed to work more hours than would total 8 hours when combined with leave hours.

. . .

514 Leave Without Pay (LWOP)

. . .

514.2 Policy

. . .

514.22 Administrative Discretion

Each request for LWOP is examined closely and a decision is made based on the needs of the employee, the needs of the USPS, and the cost to the USPS. The granting of LWOP is a matter of administrative discretion. It is not granted on the employee's demand except that:

a. A disabled veteran is entitled to LWOP, if necessary, for medical treatment.

b. A Reservist or a National Guardsman is entitled to LWOP, if necessary, to perform military training duties under the Vietnam Era Veterans' Readjustment Act of 1974. (See 38 U.S.C., section 2024.)

c. An employee who requests and is entitled to time off under 515, Absences for Family Care or Serious Health Problem of Employee, must be allowed up to a total of 12 workweeks of absence within a Postal Service leave year for one or more reasons listed in 515.41. Leave without pay may be taken in ~~combination with~~ addition to annual or sick leave for which the employee is qualified in accordance with an approved absence.

. . .

5-24-99 Corrections to Draft Leave Provisions in ELM 510

The following corrections and clarifications have been made to the draft previously provided.

512.223, **Retired Military Personnel** (under determining leave category for military personnel), section c (4) is modified by adding a note to clarify the use of form SF 813.

512.522, **Part-Time Regular** (under leave charge information for part-time employees), is modified to correct a typographical error.

514.22, **Administrative Discretion** (under LWOP policy), section c is modified to conform to a recent change in policy.

519.28, **Special Events** (under events and procedures for granting administrative leave), has the reference to the F-15 modified to indicate it is the appropriate handbook to find the expense reimbursement policies related to attending special events.

The sections affected by revisions appear below.

510 Leave

512. Annual Leave

. . .

512.2 Determining Annual Leave Category

. . .

512.223 Retired Military Personnel

. . .

c. Verification. Military service should be verified:

. . .

(4) *Campaign/Expeditionary Service.* Verify by sending a completed SF 813, Verification of a *Military Retiree's Service in Nonwartime Campaigns or Expeditions*, to the appropriate military record center. See Exhibit 521.223c for an illustration of SF 8113. This form is not stocked in the material distribution center, it is to be reproduced locally.
Note: Campaign and expeditionary service should also be verified

COLLECTIVE BARGAINING AGREEMENT

Between
American
Postal Workers
Union, AFL-CIO

And
U.S. Postal Service

November 21, 1990—
November 20, 1994

leave balance will be paid in a lump sum.

Appropriate regulations and procedures will be issued and the program will be implemented within 180 days from the signing of this Agreement.

(The preceding Memorandum of Understanding, Leave Sharing, applies to Transitional Employees.)

\+ + +

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
THE JOINT BARGAINING COMMITTEE
(American Postal Workers Union, AFL-CIO, and
National Association of Letter Carriers, AFL-CIO)

Re: Paid Leave and LWOP

The parties agree that an employee need not exhaust annual leave and/or sick leave before requesting leave without pay. As soon as practicable after the signing of the 1990 National Agreement, Employee and Labor Relations Manual (ELM) Exhibit 514.4(d) will be amended to conform to this Agreement.

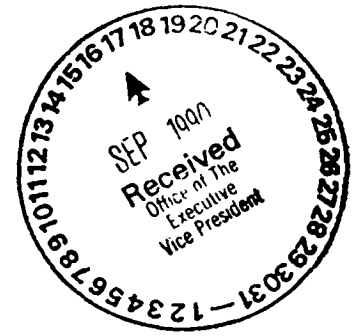
The parties further agree that this Memorandum does not affect the administrative discretion set forth in ELM Part 514.22, nor is it intended to encourage any additional leave usage.

Grievance Number H7C-NA-C 61 is withdrawn.

(The preceding Memorandum of Understanding, Paid Leave and LWOP, applies to APWU Transitional Employees.)

\+ + +

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100



Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: H7C-NA-C 61
W. Burrus
Washington, DC 20005

Dear Mr. Burrus:

On January 30, 1990, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether Article 10.6 of the National Agreement authorizes employees to use leave and LWOP simultaneously for short term absences.

It is our position that no national interpretive issue involving the terms and conditions of the National Agreement is fairly presented in this case. However, inasmuch as the union did not agree, the following represents the decision of the Postal Service on the particular fact circumstances involved.

Article 10.6 was added to the National Agreement as a result of the 1987 negotiations. The addition had two specific purposes:

1. To permit employees on extended absence to stretch available leave over a long period of time to keep medical benefit eligibility and Article 6 protection.

2. To forbid employees from using approved leave in conjunction with LWOP for the purpose of receiving holiday pay.

Article 10.6 was not intended to apply to short term absences. The JBC's 1987 proposals and minutes from negotiating sessions confirm this position. Consequently, this grievance must be denied.

Time limits at Step 4 were extended by mutual consent.

Sincerely,

David A. Stanton

David A. Stanton
Grievance & Arbitration
Division

Date_____

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

MAY 4 1988

Mr. Lawrence G. Hutchins
Vice President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

Re: H7C-NA-C 9
M. Biller
Washington, DC 20005

Gentlemen:

On February 9, 1988, David Cybulski and Charles Dudek met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether an employee who is on extended absence and wishes to continue eligibility for health and life insurance benefits, and those protections for which an employee may be eligible under Article 6 of the National Agreement may use sick leave and/or annual leave in conjunction with leave without pay (LWOP) prior to exhausting his/her leave balance.

During our discussions, we mutually agreed that an employee in the above circumstances may use sick leave and/or annual leave in conjunction with LWOP prior to exhausting his/her respective leave balance. In addition, this settlement does not limit management's prerogative to grant leave requests at its discretion according to normal leave approval procedures. Furthermore, 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.

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

Time limits were extended by mutual consent.

Sincerely,

David P. Cybulsky
Acting General Manager
Grievance & Arbitration
Division

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

Lawrence G. Hutchins
Vice President
National Association of Letter
Carriers, AFL-CIO

5/4/88
DATED

Forward Header

Subject: Possible settlement of "LWOP approval" arbitration case
Author: THOMAS G. SKOLAK at ININ001L
Date: 4/15/99 10:14 AM

as scary as it gets

Forward Header

Subject: Possible settlement of "LWOP approval" arbitration case
Author: DALE P BIERSTEKER at BLIL002L
Date: 4/14/99 8:32 PM

The following may affect how some of you handle LWOP approvals. Let me know if we need to object.

Forward Header

Subject: Possible settlement of "LWOP approval" arbitration case
Author: WALTER F O'TORMEY at WADC035L
Date: 4/14/99 5:02 PM

Ladies & gentlemen,
Comments or concerns?
Walt

Forward Header

Subject: Possible settlement of "LWOP approval" arbitration case
Author: PATRICIA A HEATH at WADC041L
Date: 4/12/99 3:34 PM

This is to let you know about a possible settlement of an arbitration case scheduled for next Wednesday. April 21 with the APWU in front of Arbitrator Das.

The APWU challenges our ability to require employees to take paid leave instead of leave without pay. The issue as framed by the APWU in the grievance papers is:

... contesting the employer's interpretation of employees' right to

use LWOP in conjunction with annual or sick leave if the leave is approved pursuant to normal leave approval procedures. Supervisors have the authority to approve "leave" for employees' absences, but the parties have negotiated that an employee's decision to use LWOP in compination with sick or annual "leave" is at the employee's discretion if the "leave" [absence] is otherwise approved.

[The USPS] letter includes that the "granting of LWOP is a matter of administrative discretion". In this context, it appears that supervisors may approve the "leave" but deny the use of LWOP. This interpretation is contrary to the parties agreement that provides that "employees may utilize annyal and sick leave in conjunction with leave without pay." Supervisory discretion is the approval or disapproval of the leave and not the specific type of leave.

Based on our discussions this morning, WE PLAN TO SETTLE THE CASE. Jim Shipman, who negotiated the Paid Leave and LWOP MOU in 1990 (now on page 312 of the APWU 1998 Agreement), agrees with the above statements. If we decide to approve the absence, we cannot disapprove LWOP. Nor can we indicate that we will approve SL but not LWOP. To that extent, it appears this case should be settled and we plan to open discussions with the APWU. Be [illegible] you might be interested and wanted to let you know of the possibility now in case you wished to provide input, prior to my contacting the APWU tomorrow.

We believe that annual leave requested under local Memo procedures is an exception, when those procedures apply only to requests for "annual leave." If an office has a 10 person "daily quota" to whom ANNUAL must be granted, an employee cannot request AL as the tenth person and later change to LWOP. Similarly, an employee who selects 15 days of AL for choice vacation, and before the period comes along uses all his AL, would not have an ENTITLEMENT to LWOP instead.

In terms of FMLA, the law indicates that we may require use of paid leave before unpaid leave. However, our contractual agreement to the contrary as noted above would be binding on us, notwithstanding the FMLA provision.

I can be reached at x3813 if you have comments or concerns.

202 842
4297

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

June 13. 1996

William Burrus
Executive Vice President
(202) 842-4246

Dear Tony:

Pursuant to the provisions of Article 15 of the National Agreement this is to initiate a Step 4 grievance protesting the employer's interpretation on the use of LWOP as expressed in your letter of June 10, 1996. The union interprets the provisions of the National Agreement and interpretations by the Department of Labor as limiting the right of the employer to require employees to use leave that has not been earned prior to granting LWOP. By opinion letter released May 12, 1995, Daniel Sweeney, Deputy Assistant Aministrator of the Wage and Hour Division provided an interpretation on this provision "to mean that the employee has both earned the leave and is able to use that leave during the FMLA leave period". The USPS policy as expressed in your June 10, 1996 letter is in conflict with this DOL interpretation.

Your argument that the right of employees to voluntarily use unearned leave somehow balances the employer's improper requirement is specious and not worthy of further comment. As you are clearly aware, the parties have incorporated this right into handbooks and manuals and have a long standing mutually recognized past practice that employees may voluntarily use unearned annual leave.

As a remedy to this violation, the union request that all unearned leave improperly applied to employee FMLA absences be restored and the employer waive collection of payment because of this illegal policy of which the employer had advance knowledge.

Thank you for your attention to this matter.

Sincerely,

William Burrus

William Burrus

Anthony J. Vegliante, Manager
Grievance & Arbitration Division
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

June 13, 1996

Dear Tony:

Pursuant to the provisions of Article 15 of the National Agreement this is to initiate a Step 4 grievance contesting the employers right to require the use of annual leave under the Dependent Care Memorandum. As expressed in my letter of May 22, 1996, provisions of the ELM, Section 513.61 expressly provides that "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*". This is in direct conflict with your response as contained in your June 10, 1996 letter. The option to use LWOP in the above circumstances is at the employee's option.

As a remedy to violations of these provisions, I request that such improperly applied leave be restored to employee balances and any collection of monies paid be waived because of the employer's advance knowledge that the policy was in violation of the rules.

Sincerely,

William Burrus
Executive Vice President

Anthony J. Vegliante, Manager
Grievance & Arbitration Division
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

paid leave of any kind. (Sick leave is not intended to be used to supplement earnings of employees.)

513.422 Minimum Unit Charge

Employee Category	Minimum Unit Charge
All part-time nonexempt employees.	Hundredth of an hour (.01 hour).
Part-time exempt employees.	(See 519.71.)

513.5 Advance Sick Leave

513.51 Policy.

513.511 May Not Exceed 30 Days. Sick leave not to exceed 30 days (240 hours) may be advanced in cases of serious disability or ailments if there is reason to believe the employee will return to duty. Sick leave may be advanced whether or not employees have annual leave to their credit.

513.512 Medical Document Required. Every application for advance sick leave must be supported by medical documentation of the illness.

513.52 Administration.

513.521 Installation Heads' Approval. Officials in charge of installations are authorized to approve these advances without reference to higher authority.

513.522 Forms Forwarded. Form 1221, *Advance Sick Leave Authorization*, is completed and forwarded to the PDC when advance sick leave is authorized.

513.53 Additional Sick Leave.

513.531 30 Day Maximum. Additional sick leave may be advanced even though liquidation of a previous advance has not been completed, provided the advance at no time exceeds 30 days. Any advance sick leave authorized is in addition to the sick leave which has been earned by the employee at the time the advance is authorized.

513.532 Liquidating Advance Sick Leave. The liquidation of advance sick leave is not to be confused with the substitution of annual leave for sick leave to avoid for forfeiture of the annual leave. Advanced sick leave may be liquidated in the following manner:

a. Charging the sick leave against the sick leave earned by the employee as it is earned upon return to duty.

b. Charging the sick leave against an equivalent amount of annual leave, at the employee's request if the annual leave charge is made prior to the time such leave is forfeited because of the leave limitation regulation.

513.6 Leave Charge Adjustments

513.61 Insufficient Sick Leave. 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.

513.62 Insufficient Sick and Annual Leave. If sick leave is approved for employees who have no annual or sick leave to their credit, the absence may be charged as LWOP unless sick leave is advanced as outlined in 513.5. LWOP so charged cannot thereafter be converted to sick or annual leave.

513.63 Disapproved Sick Leave. If sick leave is disapproved, but the absence is nevertheless warranted, the supervisor may approve, at the employee's option, a charge to annual leave or a charge to LWOP.

513.64 Absence Without Leave. An absence which is disapproved is charged as LWOP and may be administratively considered as AWOL.

513.65 Annual Leave Changed to Sick Leave. 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.

513.7 Transfer or Reemployment

513.71 Transfer.

513.711 Crediting. Individuals who are transferring from a federal agency to the USPS are credited with their sick leave balance provided there is not a break in service in excess of 3 years.

513.712 Recrediting

a. If a USPS employee transfers to a position under a different leave system, to which only a part of the employee's sick leave can be transferred, the sick leave is recredited if the individual returns to the USPS provided there is not a break in service in excess of 3 years.

b. If a USPS employee transfers to a position to which sick leave cannot be transferred, the sick leave is recredited if the individual returns to the Postal Service provided there is not a break in service in excess of 3 years.

513.72 Reemployment. Sick leave may be recredited upon reemployment provided there is not a break in service in excess of 3 years.

513.73 Reemployment--OWCP. All individuals who were originally separated and who are subsequently reemployed from a continuous period on OWCP rolls will have any previously unused sick leave recredited to their account, regardless of the length of time the employee was on OWCP and off postal rolls. **Exception:** Sick leave may not be recredited if the employee applied and was approved for disability retirement regardless of whether the employee actually collected the annuity.

513.8 Retirements or Separations

513.81 General. No payment is made for accumulated sick leave when an employee retires or separates.

513.82 Retirement.

513.821 Credit for Sick Leave. Provisions of the Civil Service Retirement law provide for the granting of credit for unused sick leave in calculating retirement or

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

June 10, 1996

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This will serve to respond to your correspondence dated May 7 and 22 requesting the Postal Service position on whether the employer may require an employee to use annual leave that is advanced but not accrued.

Your letter states, "As you are aware, full time employees are advanced annual leave at the beginning of the leave year. The blanket USPS policy of requiring employees to exhaust all leave prior to granting LWOP would require an employee to be charged leave that has not been earned."

There is no blanket policy requiring employees to exhaust all leave prior to granting LWOP. As you have previously been notified, approval of LWOP is at the discretion of the supervisor based on the needs of the employee, the needs of the service and the cost to the service. It follows that in some cases LWOP may be denied while the use of annual leave would be approved. Where an employee has no annual leave, LWOP would not be denied for an otherwise approved absence as long as there is no negative effect on the cost and needs of the service.

Your concern regarding the use of annual leave which has been accrued but not earned appears to be self-serving in this instance. You make no mention of the potential liability accrued by the employer by virtue of advancing annual leave to all full-time employees at the beginning of each year. Many, if not most, employees use annual leave before it is actually earned. You can well imagine the reaction of our employees if we were to change that practice and advise employees that they could only use annual leave on a 'pay-as-you-go' basis. We seriously doubt that this is your intent but it is always useful to look at both sides of the scale.

With regard to your question concerning the provision of Section 513.61of the Employee and Labor Relations Manual, there has been no change to this provision. If there is a particular District or Area where you believe there is a problem with this provision, and you bring it to my attention, I will address it.

If there are any questions concerning this matter, you may contact Curtis Warren of my staff at (202) 268-5359.

Sincerely,

Anthony J. Vegliante
Manager
Contract Administration APWU/NPMHU

JUN 1996
Received
Office of The
Executive
Vice President

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

Employer Cannot Force Substitution of Accrued, but Unavailable Vacation Leave Toward FMLA Leave

An employer cannot force an employee to substitute accrued paid leave that he would not otherwise be entitled to use in the current vacation year toward Family and Medical Leave Act (FMLA) leave, said Daniel Sweeney, the Wage and Hour Division's deputy assistant administrator, in an opinion letter released May 12, 1995.

In this case, the employee was told by his employer that he must substitute vacation leave that he is not yet entitled to use for part of his FMLA leave. The employer's vacation leave plan stipulates that an employee who has worked 800 hours in the current vacation year earns paid vacation leave that may not be used until the next vacation year.

Under §102(d)(2) of the FMLA (Appendix I, page 5), "an employee may elect, or an employer may require the employee, to substitute certain of the accrued paid vacation leave, personal leave, family leave, or sick or medical leave of the employee for the unpaid leave provided under the Act." The Department of Labor (DOL) has interpreted this provision "to mean that the employee has both earned the leave and is able to use that leave during the FMLA leave period," Sweeney said. An employer, therefore, cannot require an employee to use leave that is not yet available to the employee to use under terms of the employer's leave plan, Sweeney stated.

> *An employer cannot require an employee to use leave that is not yet available to the employee to use under terms of the employer's leave plan.*

He said that "the foregoing would neither prevent an employer from voluntarily advancing paid leave to an employee nor an employee from voluntarily accepting such leave during FMLA absence." The FMLA states "nothing in this Act or any amendment made by this Act shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies that comply with the requirements under this Act or any amendment made by the Act" (§403, Appendix I, page 12), Sweeney noted.

Covered Employers Must Comply With Notice Requirements Regardless of Employee Eligibility

Employers that are covered by the Family and Medical Leave Act (FMLA) but do not have eligible employees must still comply with the act's general notice requirements, said Daniel Sweeney, the Department of Labor's Wage and Hour Division deputy assistant administrator, in a May 17, 1995, opinion letter.

The letter suggests that the covered employer is a public agency with fewer than 50 employees. DOL states that all public agencies are covered by the FMLA, regardless of the number of workers they employ (§102, Appendix I, page 4).

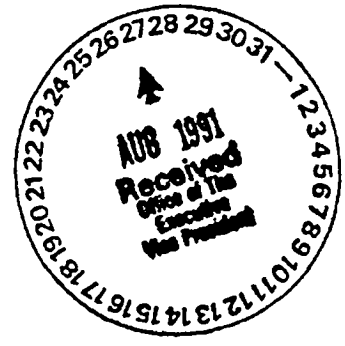
The FMLA requires that all covered employers post in a conspicuous place at the worksite a notice of the act's provisions and information concerning procedures for filing complaints of violations (§109, Appendix I, page 9), Sweeney said. This was emphasized in the preamble to the final rules, which stated that all covered employers must post a notice to inform employees of the FMLA's provisions, regardless of whether the employer has any eligible employees. "This section also notes that there is no authorized exception that relieves covered employers from this notice requirement when they have no eligible employees," Sweeney said.

DOL does not have the option under the act to waive the posting requirements for employers, as suggested by comments to the final rules, Sweeney stated. ✠

UNITED STATES POSTAL SERVICE
ROOM 9014
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
TEL (202) 268-3816
FAX (202) 268-3074

SHERRY A. CAGNOLI
ASSISTANT POSTMASTER GENERAL
LABOR RELATIONS DEPARTMENT

August 26, 1991



Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Mr. Burrus:

This letter is in further response to your July 30 letter concerning modification of PS Form 3971, Request For or Notification of Absence.

The intent of the Memorandum of Understanding relating to paid leave and LWOP is expressly stated in the first sentence of the Memorandum. It was intended only to make clear that supervisors would not disapprove employee requests for LWOP solely because the employee had an annual leave or sick leave balance.

The Memorandum of Understanding did not change any of the existing procedures for requesting leave nor does it require any change in PS Form 3971. The employee still requests the type of leave desired, and the supervisor approves or disapproves the employee's request, but it will not be disapproved solely because the employee has a paid leave balance. However, there may exist other valid reasons why the employee's request for a type of leave may be denied by the supervisor.

There is not, in our opinion, any reason to revise or modify the present PS Form 3971.

Sincerely,

Sherry A. Cagnoli

Sherry A. Cagnoli

MEMORANDUM

The undersigned parties negotiated a Memorandum of Understanding (MOU) entitled "LWOP in Lieu of SL/AL" that allows an employee to request Leave Without Pay (LWOP) prior to exhausting annual or sick leave. The following serves as a guide for administering these newly negotiated MOU provisions.

The basic intent of (in) this MOU is to establish that an employee need not exhaust annual or sick leave prior to requesting LWOP. One example of the term "need not exhaust" is (where) when an employee requests maternity or paternity leave and was previously required by local mamnagement to exhaust their sick or annual leave prior to receiving LWOP. An employee now has the option of requesting LWOP in lieu of sick or annual leave, (when they reach the point where they may "exhaust" their leave benefits).

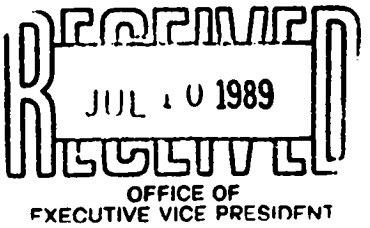
It was not the intent of this MOU to increase leave usage (i.e., approved time off). Moreover, it was not the intent that every or all instances of approved leave be changed to LWOP thus allowing the employee to accumulate a leave balance which would create a "use or lose" situation. Furthermore the 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.

This MOU does not change (impact) Local Memoranda of Understanding regarding procedures for prescheduling annual leave for choice or nonchoice vacation periods. It also was not intended to provide employees the opportunity to preschedule LWOP in lieu of annual leave for choice or nonchoice periods. (or increase leave usage. An employee may at a later date request to change the prescheduled annual leave to LWOP, subject to supervisor approval in accordance with normal leave approval procedures. however, this option is available to an employee only if they are at the point of exhausting their annual leave balance and the employee must provide evidence of such to their supervisor at the time of the leave request (e.g., pay stub)).

This MOU does not establish a (there is no) priority between incidental requests for annual leave or LWOP when several employees are simultaneously requesting such leave. The normal established local practice prevails, i.e., whether leave requests are approved in order of seniority or on a first come first serve basis or other local procedure. This memorandum of understanding has no effect on any other leave provisions contained in the Employee and Labor Relations Manual or other applicable manuals and handbooks other than specified by its specific terms.

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

JUL 3 1989



Mr. William Burrus
Executive Vice-President,
American Postal Workers Union,
AFL-CIO
1300 L Street, NW,
Washington, DC 20005-4107

Dear Bill:

This is in response to your June 5, 1989 letter regarding the use of incremental leave in conjunction with leave without pay (LWOP) for short-term absences.

As you will recall, the language in question had its genesis as a union proposal during 1987 negotiations. Its purpose was to draw attention to an already existing regulation and to permit those employees on extended absence to stretch their available leave over a longer period so as not to endanger their health benefits eligibility or their Article 6 protection. The language also emphasized the agreement reached in a Step 4 settlement (H1C-3W-C 13620) which forbade the use of approved leave in conjunction with leave without pay (LWOP) in order to receive holiday pay.

The application of this language to short-term absences was never intended by the U.S. Postal Service and was only discussed in relation to the aforementioned holiday pay scenario. In every case, the requested leave is subject to the normal leave approval procedures. Therefore, we are not in agreement with your position that the provisions of Article 10, Section 6, would be applicable to short-term leave.

I trust this sufficiently responds to your inquiry.

Sincerely,

Joseph J. Mahon, Jr.
Assistant Postmaster General

124 Cont.

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

October 21, 1987

Dear Mr. Fritsch:

In the meeting of October 19, 1987 between the unions (APWU/NALC) and the Postal Service the parties discussed the "minimum charge" for leave newly negotiated in the 1987 National Agreement.

It is our understanding of the USPS' position that employees may be required to exhaust their leave balance (sick and/or annual) prior to approving LWOP for approved absences.

The unions interpret the provisions of Article 10 as permitting employees to utilize annual and sick leave in conjunction with leave without pay prior to exhausting the appropriate leave balance subject only to the employers approval of the absence.

In accordance with the provisions of Article 15 of the 1987 National Agreement this is to initiate the issue as a interpretive dispute at step 4 of the grievance procedure.

Please respond as to the employers interpretation at your earliest convenience.

Sincerely,

William Burrus
Executive Vice President

Tom Fritsch
Labor Relations Department
U.S. Postal Service
475 L'Enfant Plaza, SW
Washington, D.C. 20260-4100

WB:rb

American Postal Workers Union, AFL-CIO
1300 L Street, NW, Washington, DC 20005

June 5, 1989

William Burrus
Executive Vice President
(202) 842-4246

Dear Mr. Mahon:

Pursuant to the provisions of Article 15 of the National Agreement, this letter is to initiate a question to determine if the parties disagree on an issue of major importance.

The 1987 National Agreement contains new language at Article 10 providing that employees may "utilize annual and sick leave in conjunction with leave without pay." The parties previously agreed that this language permits employees on extended absences to use LWOP without exhausting their leave balance. However, managers are refusing to apply the contractual language to short term absences. In some divisions managers have issued blanket policies that LWOP is to be automatically denied, although I assume that they intend to comply with the step 4 settlement on extended absences.

The parties in negotiations did not agree that the referenced language applied only to extended absences and the subject was fully explored as to the Union's intent. We would now like to determine whether or not the USPS is in agreement that an employee may utilize leave in conjunction with LWOP for short term absences, subject to the leave approval procedures.

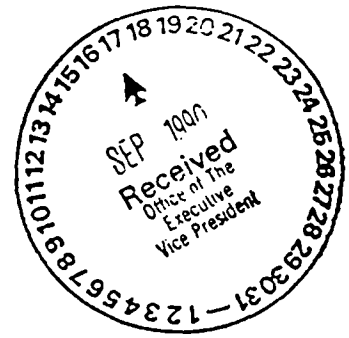
Your attention and an early reply is requested on this issue.

Sincerely,

William Burrus
Executive Vice President

Joseph J. Mahon, Jr.
Asst. Postmaster General
U.S. Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100



Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: H7C-NA-C 61
W. Burrus
Washington, DC 20005

Dear Mr. Burrus:

On January 30, 1990, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether Article 10.6 of the National Agreement authorizes employees to use leave and LWOP simultaneously for short term absences.

It is our position that no national interpretive issue involving the terms and conditions of the National Agreement is fairly presented in this case. However, inasmuch as the union did not agree, the following represents the decision of the Postal Service on the particular fact circumstances involved.

Article 10.6 was added to the National Agreement as a result of the 1987 negotiations. The addition had two specific purposes:

1. To permit employees on extended absence to stretch available leave over a long period of time to keep medical benefit eligibility and Article 6 protection.

2. To forbid employees from using approved leave in conjunction with LWOP for the purpose of receiving holiday pay.

Article 10.6 was not intended to apply to short term absences. The JBC's 1987 proposals and minutes from negotiating sessions confirm this position. Consequently, this grievance must be denied.

Time limits at Step 4 were extended by mutual consent.

Sincerely,

David A. Stanton
Grievance & Arbitration Division

Date_____

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

MAY 21 1974

Mr. James H. Rademacher, President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001

86SA 73

Re: Glenn Sparrow
Chapel Hill, NC
NB-S-1129(N-8)/3SR-317

Dear Mr. Rademacher:

On April 18, 1974, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure. Time limits for resolving this grievance were extended by mutual agreement.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

It is our position that neither sick leave nor leave without pay can be charged against an employee unless requested by that employee. The evidence available indicates that only 4 of the 82 employees scheduled to report on the day in question were detained because of the snowstorm. Thus, the provisions for granting administrative leave do not apply in this situation. To resolve this case management is directed to review the grievant's time records, and to correct those records to reflect emergency annual leave for the hours in question. We note that management has indicated its intention to assure that no sick leave will be charged to the grievant for the hours in question.

Sincerely,

Peter A. Genereux
Labor Relations Department

July 30, 1991

Dear Ms. Cagnoli:

The 1990 Arbitrated Contract provides new provisions for the use of leave, permitting the use of LWOP at the employee's discretion. The only way to give any meaning to these new provisions is to modify PS Form 3891 that the employee's request for leave or LWOP occurs after the absence has been approved. The supervisor's decision to grant the request to be absent should not be colored by the leave used.

This was the parties intent in agreeing to the revised language. It would be made meaningless, if the approval is based on whether or not leave is requested.

This is to request your immediate attention to this issue.

Yours in union solidarity,

William Burrus
Executive Vice President

Sherry A. Cagnoli
Asst. Postmaster General
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

WB:rb

American Postal Workers Union, AFL-CIO
1300 L Street, NW, Washington, DC 20005

September 6, 1991

William Burrus
Executive Vice President
(202) 842-4246

Dear Mr. Downes:

The enclosed memorandum, as amended, would be acceptable to APWU as clarification of the new language of Article 10.

An explanation of the changes that I made are as follows:

Paragraph 2 - First sentence: proper sentence structure only

Last sentence: Expands on language of the Agreement

Paragraph 3 - First sentence, grammatical correction only

Second sentence: (or increase leave usage) repeated in prior paragraph

Third sentence: This application was not discussed in negotations and although it may be permitted should not be included as clarification.

Paragraph 5 - Grammatical change only

Your attention of this matter is appreciated.

Sincerely,

William Burrus
Executive Vice President

William Downes
Director, Office of Contract Administration
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

WB:rb

****

In the Matter of the National Arbitration Between

UNITED STATES POSTAL SERVICE (USPS)	)	
and	)	W4N-5H-C-40995 (Placerville, NC)
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO (NALC)	)	and
and	)	S1N-3P-C-41285 (Cary, NC)
NATIONAL RURAL LETTER CARRIERS' ASSOCIATION (NRLCA) (NRLCA)	)	City/Rural Jurisdictional Issues

****

Before: Dennis R. Nolan, Arbitrator, School of Law, University of South Carolina, Columbia, SC 29208-0001.

Appearances:

For the Employer: Kevin B. Rachel, Labor Relations Counsel, Washington, DC.

For the NALC: Keith E. Secular, Cohen, Weiss and Simon, New York, NY.

For the NRLCA: William B. Peer, Peer & Gan LLP, Washington, DC.

Place of Hearing: Washington, D.C.

Date of Hearing: July 14, 1998

Date of Award: December 23, 1998

OPINION

I. Statement of the Case.

This arbitration proceeding involves what must be two of the oldest pending grievances in the USPS dispute resolution system. The NALC filed Grievance No. S1N-3P-C-41285 (Cary, NC) on August 21, 1984 and Grievance No. W4N-5H-C-40995 (Placerville, CA) on January 29, 1987 to challenge the Postal Service's shifting of certain deliveries from city to rural delivery service. (In the Placerville incident, the Employer also changed certain deliveries from rural to city delivery, but the grievance did not challenge that shift.) The Union certified the cases for arbitration on November 16, 1988 (Cary) and July 18, 1989 (Placerville). Rather than proceed to arbitration, however, the parties, joined by the NRLCA, engaged in extended discussions and other proceedings.

The delay in processing these grievances was due in large part to the existence of many other NALC grievances presenting the same general issue. In each instance the Employer shifted certain deliveries from city to rural service, prompting protests from the NALC. Because the problem was widespread and recurring, and because it involved the interests of both unions as well as those of the Employer, the three parties decided to establish a separate arbitration forum to deal exclusively with jurisdictional conflicts between the NALC and NRLCA. The parties then chose as test cases the Cary and Placerville grievances from the many waiting arbitration. Their hope is that the parties themselves will be able to apply the principles announced in these cases to settle the remaining grievances. If that proves impossible, they will then proceed to arbitrate other grievances.

The arbitration hearing took place in Washington, DC on July 14, 1998. The parties appeared and had full opportunity to testify, to examine and cross-examine witnesses, and to present all pertinent evidence. In addition to the voluminous documentary evidence, the parties submitted substantial briefs and more modest reply briefs. The last of these briefs arrived on November 10, 1998.

II. Statement of the Facts.

Because the facts bearing on the general question of city-to-rural conversions are so closely tied to the merits of the case, I will discuss them in Part VII. For the moment it will suffice to sketch the background of the two grievances the parties have chosen to use as proxies for their broader disputes. The parties decided not to delve into many specifics about the Cary and Placerville grievances. The NALC in particular agreed at the hearing only to proceed on questions of principle while reserving its right to raise certain factual and procedural issues peculiar to these grievances. For example, while accepting for the sake of argument Management's stated reasons for making the Cary and Placerville adjustments, the NALC notes its disagreement with the Postal

Service as to whether the Placerville changes actually clarified boundaries and about the most convenient placement for the disputed Cary deliveries. Accordingly, the facts stated below provide only a brief outline.

The first grievance arose in Cary, North Carolina, a suburb of Raleigh. Following the annexation of a subdivision by the City of Cary and in response to customer requests, the Postal Service in 1984 transferred 244 deliveries (136 city deliveries and 108 rural deliveries) from the Raleigh Post Office to the Cary Post Office. All 244 were added to a Cary rural route as an extension of that route's territory rather than to a Cary city route. Because its members lost 136 deliveries and gained none in return, the NALC grieved. The 136 deliveries represented only 20-25% of any city route. So far as the record shows, the Postal Service made the switch purely for operational reasons.

The second grievance arose in Placerville, California. Early in 1987, the Postal Service exchanged territory between rural and city deliveries to establish clearer boundaries, avoid commingling, and relieve overburdened city routes. Again, so far as the record shows, the Postal Service made the changes purely for operational reasons. As in Cary, the NRLCA gained more deliveries (455) than the NALC (238), so the NALC grieved the change.

The two cases were similar in many respects. In both, the city routes had long been delivered by city carriers; in neither did the Postal Service negotiate the changes before implementing them; and in both the NALC sought reconversion and compensation for the affected City Carrier Craft. Needless to say, in neither case did the NALC agree to the conversions.

III. The Issue.

The specific issue applicable to these grievances is this: did the Postal Service violate any controlling authority by converting certain deliveries in Cary, North Carolina and Placerville, California from city to rural? If so, what shall the remedy be? Beyond this narrow issue, the parties have presented a broader question: to what extent and under what circumstances may the Postal Service convert city deliveries to rural deliveries?

IV. Pertinent Authorities.

Of all the arguably controlling and persuasive authorities, just a few are accepted as relevant by all three parties. In the case of precedential arbitration awards, a few sentences or paragraphs distill the essence. Because it would be impossible to decide any jurisdictional grievance without referring to these authorities, and because it would be impossible to understand a jurisdictional arbitration award without reading the the cited authorities, I shall quote them in pertinent part.

A. USPS/NALC 1994-1998 Collective Bargaining Agreement (Joint Ex. 2)

ARTICLE 1
UNION RECOGNITION

Section 1. Union

The Employer recognizes the National Association of Letter Carriers, AFL-CIO as the exclusive bargaining representative of all employees in the bargaining unit for which it has been recognized and certified at the national level — City Letter Carriers.

ARTICLE 3
MANAGEMENT RIGHTS

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

A. To direct employees of the Employer in the performance of official duties; . . .

C. To maintain the efficiency of the operations entrusted to it;

D. To determine the methods, means, and personnel by which such operations are to be conducted; . . .

ARTICLE 7
EMPLOYEE CLASSIFICATIONS

Section 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:

1. All available work within each separate craft by tour has been combined.

2. Work of different crafts in the same wage level by tour has been combined.

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.

ARTICLE 19
HANDBOOKS AND MANUALS

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. . . .

B. USPS/NRLCA 1995-1999 Collective Bargaining Agreement (Joint Ex. 1)

[Articles 1, 3, and 19 of the USPS/NRLCA Agreement are identical in relevant respects to the same-numbered provisions of the USPS/NALC contract quoted above. The USPS/NRLCA Agreement does not contain a counterpart to the USPS/NALC contract's Article 7.]

C. USPS/APWU/NPOMH/NALC/NRLCA Memorandum of Understanding on Jurisdictional Disputes, September 4, 1975 (NALC Ex. 13)

> . . . In order to resolve [jurisdictional] disputes the parties agree that a standing national level Committee on Jurisdiction, comprised of representatives of each party, shall be established to identify and resolve such current and any future jurisdictional disputes. . . .
>
> . . . In resolving disputed assignments, the Committee shall consider, among other relevant factors, the following:
>
> 1. existing work assignment practices;
>
> 2. manpower costs;
>
> 3. avoidance of duplication of effort and "make work" assignments;
>
> 4. effective utilization of manpower, including the Postal Service's need to assign employees across craft lines on a temporary basis;
>
> 5. the integral nature of all duties which comprise a normal duty assignment;
>
> 6. the contractual and legal obligations and requirements of the parties. . . .

D. Postal Operations Manual (USPS Ex. 9)

611.3 Conversions

.32 Rural Delivery to Other Delivery Service

.321 As a general rule, conversions from rural to city delivery shall be considered only to

a. Provide relief for overburdened rural routes when all other alternatives are impractical.

b. Establish clear cut boundaries between rural and city delivery territory and eliminate overlapping and commingling of service.

c. Provide adequate service to highly industrial areas or apartment house complexes on rural routes.

d. Provide service to areas where city delivery service will be more cost effective. Divisional review is required when cost is the basis for conversion.

E. Postal Operations Manual, August 1, 1996 Additions (USPS Exhibit 5)

64 City Delivery Service

644 Conversions

644.1 Definitions

In this section, *conversion* refers to replacement of city service with rural delivery service. Any conversion of city delivery territory must be approved by the district manager.

644.2 Conversion of City Delivery Service to Rural Delivery Service

As a general rule, conversions from city delivery to rural delivery service shall be considered only for the following reasons:

a. To establish clear-cut boundaries between city, rural, and highway contract delivery territory and eliminate overlapping and commingling of service.

b. To restore reasonable operating efficiency where pockets of delivery area become separated due to some physical change that is expected to be permanent (e.g., construction of a dam or limited access highway, elimination of a bridge, etc.).

c. To accommodate municipal or community identity preferences where the post office gaining the delivery territory does not have city delivery service and the carrier casing and delivery workload

to be transferred is less than the minimum scheduling requirement for an auxiliary city route.

F. Other Authorities

1. USPS/NALC Arbitration Award, N-C-4120 (Sioux Falls, SD), Sylvester Garrett, Impartial Chairman, August 30, 1974 (NALC Ex. 10)

Article VII, Section 2-A itself must be read in the context of the entire National Agreement, and of the collective bargaining relationships which have existed in the Postal Service since the early 1960's. At first blush, two basic propositions emerge from this provision:

(1) Normally work in different crafts will not be combined into one job, and

(2) full-time or part-time scheduled assignments may be established to include work within different crafts "in order to maximize full-time employment opportunities and provide necessary flexibility," but only after "studied effort" by Management to meet its requirements "by combining within craft or occupational groups." . . .

[Management's arguments] overlook the consistent treatment of the City and Rural Carriers as separate "crafts" for purposes of collective bargaining. While their work in many instances may be virtually identical, this in no way can detract from the dominant fact that these two groups have been deemed to be separate "crafts" for many years, both in law and in practice. Article VII, Section 2-A, cannot be interpreted properly except in light of this firmly established meaning of the words "craft" and "crafts" as used therein. This meaning thus does not lie in any abstract definition of either "craft." It can only be found in established practice in each Post Office in assigning work to one or the other of the craft bargaining units. If this interpretation somewhat limits the flexibility of Management to transfer work from City to Rural Carriers (and thus to change the type of service provided in given areas) it nonetheless is inescapable when Article VII, Section 2-A is read in the context in which it was written. Moreover, the basic policy thus reflected in this provision may well be essential to the maintenance of sound relationships between the Postal Service and the various Unions involved, as well as among the Unions themselves.

Although Article VII, Section 2-A, therefore must control here, the manner of its application is not free from difficulty. The Union appears to suggest that no work, under any circumstances, may be reassigned from City Carriers to Rural Carriers. It emphasizes that Article VII, Section 4, makes clear that none of Article VII applies to Rural Carriers, and seemingly would imply from this that no work may be assigned to Rural Carriers under Article VII, Section 2-A. This argument possibly may rest on an erroneous belief that Article VII, Section 2-A, constitutes a grant of authority to Management. It does not.

Instead, it places a limitation upon the exercise of Management authority defined under Article III. Thus Management retains full discretion to deal with matters covered by Article VII, Section 2-A, except to the extent limited by the reasonable meaning of that provision.

[Pp. 16-18; emphasis in original.]

2. USPS/NPOMH/APWU Arbitration Award, AW-NAT-5753, A-NAT-2964, and A-NAT-5740 (West Coast), Sylvester Garrett, Impartial Chairman, April 2, 1975 (NALC Ex. 12)

[Reaffirming his Sioux Falls decision, Arbitrator Garrett states that since the National Agreement reflects] a clear intent by all parties to protect the basic integrity of the existing separate craft units as of the time the 1971 National Agreement was negotiated, the Impartial Chairman must find that Article I, Section 1 bars the transfer of existing regular work assignments from one national craft bargaining unit to another (absent any change in conditions affecting the nature of such regular work assignments), except in conformity with Article VII. [P. 48]

It should be understood, however, that the present rulings in no sense restrict Postal Service discretion to realign job duties, to make temporary assignments, to create new positions, or to establish additional full-time schedule assignments which include work within different crafts, as long as such actions are in conformity with all relevant provisions of the National Agreement, including Article I, Section 5; Article III; and Article VII. [P. 60]

3. June 9, 1975 Memorandum from David H. Charters, Director of the USPS Office of Grievance Procedures, to Regional Labor Relations Directors, stating the views of the USPS, NALC, and Arbitrator Garrett on the Arbitrator's Sioux Falls Decision (NALC Ex. 11)

[After a meeting between Charters, NALC President Rademacher, and Arbitrator Garrett] a basic premise emerged to the effect that no significant amount of work that has traditionally been done by city letter carriers may be transferred to rural carriers (absent a material change in the nature of the work) except through the provisions of Article VII, Section 2.A. . . .

The obligations under Article VII, 2.A. are somewhat different in the 1971 and 1973 Agreements, but each Agreement requires certain specific steps to be taken before a combination job may be created, and therefore before work may be transferred from city carriers to rural carriers. In none of the outstanding cases was there any attempt to follow these steps properly. Service improvements, efficiency, or cost are, under the Agreement, not legitimate factors for consideration in making determinations of this nature.

> It is impossible to spell out with any degree of specificity the definitions of such words as "significant," "traditionally," and "material." Suffice it to say that good judgment should be used, and each case must be handled individually upon its own merits, in accordance with the general principles set forth in the second paragraph. . . .
>
> Although the Agreement does not specifically address the subject, I believe that if changes from city to rural service appear operationally advisable, for example to square off boundaries for scheme simplification purposes, such changes may be accomplished through exchanges of territory provided there is no significant net transfer of stops from city carriers to rural carriers, and also provided that both the NALC and NRLCA locals agree to the changes.

[Emphasis in original.]

4. USPS/NALC Arbitration Award, NC-NAT-1576 (Miami/Hollywood, FL), Sylvester Garrett, Impartial Chairman, January 17, 1977 (USPS Ex. 7)

> [In a grievance involving a jurisdictional dispute between the NALC and APWU over the practice of mail clerks performing "direct hold-outs," Arbitrator Garrett distinguished his West Coast decision as involving transfer of entire bid assignments from one craft to another. The Miami/Hollywood case, he said, "involves only a minor reassignment of work." Article I must be interpreted "in he context in which it was negotiated," and that included "not only . . . the history of collective bargaining on a craft basis, but also a long history of day-to-day administration of the Postal Service, as embodied in various Manuals." Existing manuals expressly authorized the use of "directs" and "special listings."]
>
> There is no basis, against this background, to find an implied obligation under Article I, Section 1 which would preclude the Postal Service from continuing to apply such a long established technique for improving the efficiency of its operations, even if a realignment of duties among the various crafts may result. [Pp. 20-22, emphasis in original]

5. USPS/NALC/NRLCA Arbitration Award, H7N-NA-C 42 (Oakton/Vienna, Virginia), Richard Mittenthal and Nicholas A. Zumas, Arbitrators, August 1, 1994 (NALC Ex. 29)

> [Although Arbitrator Garrett's West Coast award did not involve either the NALC or the NRLCA], these unions were, as of April 1975, parties to the same National Agreement as the Mail Handlers and APWU. Garrett's interpretation of Article I, Section 1 is a controlling precedent for all four unions as well as the Postal Service. [P. 39]

We believe, moreover, that Garrett's view of the history and purpose of Article 1, Section 1 is correct. It follows that the unions may properly invoke this provision to "protect the basic integrity" of their respective "separate craft units. . ." NALC has a right to protect its craft jurisdiction; NRLCA has the same right to protect its craft jurisdiction. Article 1, Section 1, to repeat, "bars the transfer of existing regular work assignments from one national craft bargaining unit to another (absent any change in conditions affecting the nature of such regular assignments). . ." Or, to express the point somewhat differently, "existing regular work assignments" must ordinarily remain within the craft to which they have customarily been assigned. An exception is appropriate in those circumstances where the character of such "work assignments" has changed to such an extent that they can no longer fairly be said to constitute "work . . ." of the original craft. [P. 40]

The core of [Arbitrator Garrett's Sioux Falls] ruling is that the jurisdiction of a "craft" is to be determined by the "established practice in each given Post Office in assigning work. . ." From the standpoint of jurisdiction, the customary way of doing things becomes the contractually correct way of doing things. Work always performed by rural carriers in a given area is presumptively within NRLCA's jurisdiction just as work always performed by city carriers in a given area is presumptively within NALC's jurisdiction. This heavy reliance on "practice" was a means of insuring the stability of each craft bargaining unit. [P. 42]

In assessing the significance to be attached to the development of a rural area, one must also consider the Postal Operations Manual (POM). The POM is one of the "handbooks, manuals and published regulations of the Postal Service. . . ." As such, it is binding on the parties under Article 19 of their respective National Agreements insofar as it relates to "wages, hours or working conditions. . . ." [P. 48]

[After quoting POM Sections 611.31 and 611.32, the arbitrators conclude that] Management may "consider" conversion from rural to city delivery when any of the matters set forth in Section 611.321 are present. . . . Nowhere does the POM state what the outcome of that "consider[ation]" should be. The plain implication is that Management is free to make whatever decision it wishes. . . . A careful reading of the POM clearly shows that Management is to have a large measure of discretion on this subject. [P. 50]

The managerial freedom acknowledged by these regulations and incorporated in the National Agreements through Article 19 cannot be ignored. This does not mean that Article 1, Section 1 jurisdictional rights do not exist or that a clear violation of such rights could not in appropriate circumstances call for a conversion from rural to city delivery notwithstanding the POM regulations. Our ruling simply is that where, as here, jurisdictional lines are blurred by the long-standing overlapping duties and working conditions of rural and city carriers, the regulations can properly be invoked to help

determine jurisdictions and to better understand what significance, if any, to attach to a "fully developed" area. [Pp. 51-52]

[Arbitrator Garrett's principle that the meaning of "craft" can only be found in established practices is correct because] given the maturity that characterizes the collective bargaining relationships of these parties, the customary way of doing things is the most realistic guide to jurisdiction. We accept this concept also because it does leave room for legitimate jurisdictional challenges when work is changed to such an extent that the "established practice" can no longer be said to have persuasive force. [P. 52]

The Garrett awards in 1974 and 1975 recognized that there are jurisdictional lines between the several crafts, that Article 1, Section 1 grants each craft union the right to protect its jurisdiction, and that "established practice" is the most reliable guide in defining jurisdiction. Neither in these awards, nor in any subsequent awards, has any attempt been made to translate these generalities into objective criteria for distinguishing one craft from another. The practical difficulties in formulating such criteria should be obvious. These difficulties are even more pronounced when dealing with two crafts, such as rural carriers and city carriers, whose work overlaps in so many ways.

[To set objective criteria] would be unwise not just because of what occurred in the 1981 negotiations but, more important, because the arbitrators have only a limited knowledge of the detailed work assignments for these crafts on a national basis. It would be highly mischievous to establish such criteria without any clear idea as to what their probable impact on the crafts would be. Such complex matters are best left to the bargaining table. [Pp. 54-55]

6. USPS/APWU/NPOMH Arbitration Award, AD-NAT-1311, Howard Gamser, Arbitrator, October 13, 1981 (USPS Ex. 6)

In weighing the merits of the contentions raised by the APWU, the Arbitrator was guided principally by the criteria established in the Memorandum of Understanding [NALC Ex. 13], which are set forth above, as well as by the other considerations voiced by the arbitrators who decided earlier jurisdictional disputes between these same parties. Furthermore, the changes which have taken place in mail processing in the postal service in the relatively recent past also had to be taken into consideration in order to realistically appraise the compliance by the Postal Service with the criteria mentioned above in its determinations made in publishing and implementing Regional Instruction No. 399 in the manner protested by the APWU.

There is no question that with the passage of the Postal Reorganization Act, as the USPS pointed out, Congress decreed that greater emphasis on efficiency and economy would have to be exhibited by management. To that end, management was charged by the

Congress with the responsibility for reviewing all postal service operations to promote greater efficiency and more expeditious mail handling.

At the same time, perhaps spurred on by postal reorganization legislation, there have been dramatic and far reaching changes adopted in the actual mail distribution process. . . . [P. 8]

[In contrast to the situation in Arbitrator Garrett's West Coast decision, where certain work assignments were unilaterally transferred from one craft to another, in this case] each of the disputed assignments were being performed by Mail Handlers as well as Clerks at various facilities throughout the Country. Additionally, . . . the assignments made in Regional Instruction No. 399 are "primary" assignments only. There is no entitlement bestowed upon either the Clerks nor the Mail Handlers to perform each of these operations at every facility. No employee presently performing any of the disputed operations of functions is to be replaced except by attrition. No hard and fast demarcations have been made. No wholesale dislocations or reassignments of functions or operations is contemplated.

It must also be noted that the Garrett Award did provide that changed conditions could bring about changes in assignments. As was discussed earlier in this Opinion, revolutionary changes in the process of mail handling have been experienced. Regional Instruction No. 399 has reacted to those changes on a national basis by a reevaluation of previous functional assignments in a very limited way. Craft lines have not been obliterated or ignored. They have been recast in a formal writing to reflect changes in practice, which have evolved over the period of the past several years, which were responsive to the technological and other operational changes which have been instituted by management to move the mail more efficiently and effectively.

7. USPS/NALC Arbitration Award, S1N-3W-C 18751 (Venice, FL), J. Fred Holly, Arbitrator, December 5, 1983 (NALC Ex. 44)

The POM does not deal specifically with conversions from city to rural delivery. Instead, it deals exclusively with conversions from city to rural delivery. Despite this, however, it is logical that the same criteria would apply in either event. [P. 8]

8. USPS/NALC Arbitration Award, S1N-3W-C-33880 (West Palm Beach, FL), J. Earl Williams, Arbitrator, August 29, 1985 (NALC Ex. 45)

The Arbitrator also agrees with Arbitrator Holly when he concluded that, despite the fact that the POM deals exclusively with conversions from rural to city delivery, it is logical that, unless clearly impractical, the same criteria would apply either way. [P. 12]

9. USPS/NALC Arbitration Award, S1N-3Q-C-25242 (Florence/Richland, MS), P. M. Williams, Arbitrator, November 6, 1987 (USPS Ex. 10)

. . . The undersigned does not disagree with Dr. Holly's observation of it being logical that the criteria should be the same whether the conversion was from rural to city delivery or vice versa. But it seems to him that the proper test is not whether the latter situation is logical, rather the test is whether the parties have intended that conversions from city to rural delivery are within the province of the POM? If they did then Dr. Holly's reasoning was correct; however, if they did not then while he may have reached the right result from applying the facts before him to §610 and §630 his authority to do so is questionable at best, and lacking at worst. . . .

[Posing the question as to whether the POM's omission of city-to-rural conversions was an oversight, Arbitrator Williams] is not inclined to believe it was oversight because the parties at the national level are too sophisticated to have allowed that to happened [*sic*]. He therefore assumes it was a conscious effort on their part to not include it in the POM. . . .

[He believes the party excluded that topic] because the parties understood the remoteness of the possibility to not warrant their spending a great deal of time trying to agree upon what they would do should the situation arise. Moreover, if one did arise and the Employer believed it should make a change — as it did here — it could exercise its rights as retained in Article 3 to make it. . . . [Pp. 5-6]

[Because the POM provisions do not apply to city-to-rural conversions], in order to prevent the Employer from doing as it did in this case the Union has the obligation to point to language in the [National Agreement] or the manuals to support its position. It has relied on §610 and §630 to support its position. But it must agree the language there is silent on this kind of a "conversion". . . .

If [the Union] can make such a showing the grievance should be sustained. However if it cannot show either by clear language in the POM or by a past practice in the relationship of the parties on matters such as this its grievance must be denied.

The undersigned is of the opinion, and so finds, the POM simply does not cover the situation at hand. And despite Dr. Holly's observation that logic directs one to conclude it should be included there he is not persuaded that such inclusion was intended by the parties.

Finding nothing in the NA or the POM to support the Union's claim he is constrained to find that the grievance should be denied. [P. 7]

V. The Parties' Positions.

Part VII discusses the detailed arguments made by the parties. To avoid duplication, I will therefore limit this section to very brief statements of the parties' broadest arguments.

A. The USPS's Position.

The essence of the Postal Service's position in this case is that, under the governing authorities, it may convert deliveries from city to rural service so long as it does not transfer whole bid assignments and so long as it acts for legitimate operational reasons such as squaring off boundaries, eliminating commingling, and improving efficiency. The one thing that the authorities agree on is that the Employer has some right to transfer some work for good reasons. This is a far fairer position than the NALC's attempt to ban all work transfers.

B. The NALC's Position.

The NALC argues that the Postal Service's authority is far more limited. Under the Agreement, the relevant National awards, and the Charters memorandum, the Postal Service may convert deliveries from city to rural service only when there is no net change in deliveries between the affected unions and only when both local unions agree. The NALC therefore asks for a ruling that Management's justifications for the Cary and Placerville conversions are facially invalid. It asks that the grievances be remanded to the parties for further discussion and possible arbitration of procedural and remedial issues.

C. The NRLCA's Position.

The NRLCA's primary argument is that the Oakton/Vienna award controls the outcome of this case. If it is necessary to go beyond that argument, the NRLCA challenges the NALC's denial of any residual management prerogative; asserts that the Garrett awards and the Charters memorandum do not control this case; claims that under standard principles of contract law, the NALC's conduct and the parties' course of dealings and course of performance have modified the collective bargaining provisions on which the NALC now relies; and maintains that the doctrine of laches bars the NALC's grievances.

VI. Discussion.

A. Introduction

Stripped to its core, this dispute concerns the Postal Service's desire for the freedom to change some deliveries from city to rural to achieve operational efficiencies such as neater geographical divisions and lower costs. For the moment, the NALC opposes the Postal Service's objective while the NRLCA supports it. Naturally the unions' positions reverse when the Postal Service uses efficiency as a justification for switching deliveries from rural to city. These

grievances involve only city-to-rural conversions, so this opinion covers only those situations. Different considerations, in particular past practices and POM provisions, may apply to the more common case of rural-to-city conversions.

Resolving these disputes has been a difficult chore for arbitrators because there is no clear controlling authority. The governing statute, regulations, contracts, and precedents recognize the principle of craft integrity but also recognize that there are no sharp lines between the crafts. Changes in demographic patterns over the last few decades have exacerbated jurisdictional conflicts between the two crafts involved in this case, the city and rural carriers. Earlier in this century the differences between them were marked: city was city, rural was rural, and rarely did the twain meet. As cities produced suburbs and suburbs swallowed farmland, the twain did meet, often and everywhere. Not only did cities poach on rural areas, the nature of the work performed by both crafts changed. Where city carriers were assigned to thinly-settled suburban areas, they had to become more mobile to reach delivery sites. Where rural carriers found themselves covering newly-sprouted developments, they had to dismount.

The result, as all parties recognize, was that it has become impossible to distinguish carrier craft jurisdictions either by settlement density or by the methods of performing the work. What remains is a struggle over turf rather than principle. That is a purely factual observation, not a judgmental one. As long as the carrier unions remain legally separate, each will necessarily protect current jobs and seek new ones. Moreover, in the absence of clear dictates from Congress, there is no simple way to decide in any given case which union's members have the right to perform the work. The three parties largely accept certain general principles but differ whenever the Postal Service or an arbitrator tries to give those principles concrete application.

Indeed, the futility of translating principle into practice drives some to avoid the effort. In the Oakton/Vienna case, for example, two of the best arbitrators in the country were compelled to describe attempts to establish objective criteria as "highly mischievous" because arbitrators could not possibly predict the impact the criteria would have in other locations. As a result, the most that any arbitrator can do is to state or restate the general principles and then apply them to the instant grievances. If they perform that task well, their decisions should help the parties resolve some other pending disputes. If they do it poorly, their decisions may only invite more grievances. Ultimate answers to complex questions, as Arbitrators Mittenthal and Zumas recognized, "are best left to the bargaining table." Any jurisdictional arbitration award will therefore be but one step on what promises to be a very long road.

B. Background

1. Conversions in General

As cities expanded into formerly rural territory, there was a widespread assumption that mail deliveries, like other aspects of the newly developed regions, would be absorbed by the encroaching city. That is the way most of the changes went, and that is what the Postal Service's

first regulations and instructions on conversions between crafts covered. The problem with that approach, from the NRLCA's view, is that it operates like a ratchet: the NALC would always gain deliveries at the expense of the NRLCA. The NRLCA's predictions (in its brief at 38) that the NALC's position would cause the NRLCA to "wither and die" and would bring about "the potential end of rural delivery in America" are overwrought, but it is undeniable that the number of rural carriers would shrink with their territory, like the wolf and the moose. Accordingly, the NRLCA vigorously challenges most rural-to-city shifts.

From the NALC's point of view, however, merely leaving existing boundaries intact posed a different problem. As people spilled out of cities and into their suburbs, the number of city deliveries might decline while the number of rural deliveries grew. Accordingly, the NALC occasionally seeks to extend its coverage to new territory, as it did in the Oakton/Vienna dispute.

Until relatively recently, city-to-rural conversions barely reached the Postal Service's radar screen. There was never an express ban on the practice but hardly anyone thought it generally appropriate. Farms could become cities but cities did not become farms. The idea that rural carriers could poach on existing city routes just did not arise, except in the rare case of a territorial trade-off to smooth boundary lines. [The Postal Service did issue a Regional Instruction in 1968 that prohibited extension of rural service to city patrons (NALC Ex. 31), but it never incorporated that instruction in the POM. That Instruction thus serves only as a statement of the Postal Service's policy at the time and does not control the present grievances.]

For the most part, the Postal Service tried to avoid conversions because they inevitably antagonized one or another of its unions. As David Charters, the former Director of the Postal Service's Office of Grievance Procedures, testified in the Oakton/Vienna case, the result was "sort of a bias" against conversions (NALC Ex. 43, p. 30). The safest course for the risk-averse Postal Service bureaucrat would be to maintain the status quo. But at this point a new consideration enters the picture. The Postal Service is supposed to operate efficiently. When the Postal Service was more of a political agency and faced little competition, it could sacrifice efficiency to other goals. As the Postal Service faced more competition and more concern in Congress over its budgetary problems, efficiency rose in the hierarchy of values. The Postal Reorganization Act (PRA) of 1970 reflected Congress's desire that the Postal Service act more like a business and less like a patronage provider.

Efficiency, however, often conflicts with stability. Where city and rural deliveries mingle, the status quo may not be the most efficient way to deliver the mail. Changing delivery patterns from city to rural or from rural to city, though, prompts the very jurisdictional disputes the Postal Service usually tries to avoid.

From the Postal Service's point of view, there is only one route out of this dilemma. If it had clear authority to assign deliveries in the most efficient fashion, it could satisfy Congress without the risk of second-guessing by arbitrators or judges. The first challenge, therefore, was to establish its power. Authority for rural-to-city conversions has long been available in the Postal

Operations Manual (POM), Section 611.321 of which specifies the criteria to be employed (USPS Ex. 9). That section's four criteria all deal with efficiency. So long as the Postal Service can demonstrate the existence of one or more of those criteria, rural-to-city conversions are proper, subject only to the NRLCA's right to grieve and arbitrate any given change.

2. City-to-Rural Conversions

a. The Sioux Falls Decision and the Charters Memorandum

The more difficult problem is converting territory from city to rural delivery. Because there were no regulations on point, the Postal Service initially justified its rare city-to-rural conversions on its statutory and contractual management rights. An early effort along those lines led to Arbitrator Sylvester Garrett's landmark Sioux Falls decision. As part of a broader reorganization of delivery services in the Sioux Falls area, the Postal Service transferred certain city routes to rural delivery in order to create positions for six displaced rural carriers. In the end, about 800 deliveries went from city to rural delivery and about 50 went from rural to city. The NALC apparently claimed that the Postal Service could never assign city deliveries to rural carriers. The Postal Service defended the grievance by arguing that the delivery crafts were indistinguishable and that in any event the Service had the authority to decide the type of delivery to be provided, and therefore the craft of the employees making the deliveries.

After a careful examination of the parties' bargaining history and of the National Agreement, Arbitrator Garrett rejected both extremes. He found that Management retained full authority to assign work except as limited by Article VII, Section 2-A, which in relevant respects reads the same today as it did in 1974. He sustained the grievance, however, because Section 2-A allowed "the type of reassignment of work here in issue" only "to maximize full-time employment opportunities and provide necessary flexibility" — and even then, only after a "studied effort" to accomplish those goals by combining work *within* crafts. Because the Postal Service met neither requirement, the conversion was improper.

Arbitrator Garrett wisely limited his ruling as closely as possible to the facts before him. His holding held Management to the words it had agreed to in the National agreement — that is, that the Postal Service would combine work of different crafts into a single job only for the stated purposes and only after the stated efforts to explore alternatives. The facts of that case differ widely from the facts here. Most notably, the changes in Sioux Falls involved the shift of entire bid positions in order to employ some displaced rural carriers. These grievances involve the transfer of a much smaller number of deliveries for very different reasons. As a result, Arbitrator Garrett's holding does not answer the issue posed by these parties.

Three parts of the Sioux Falls opinion do provide useful guidance. First, the National Agreement and other authorities include the principle of craft integrity. Even without a specific work-preservation guarantee, the Agreement's recognition clause and the parties' bargaining history show that the Postal Service is not free to ignore craft lines when assigning work. Article

VII, Section 2-A, on which Arbitrator Garrett so heavily relied, is just one example of that principle. Second, when navigating dangerous waters like these, every arbitrator should follow his advice to resolve jurisdictional disputes primarily by relying on "established practice in each Post Office in assigning work to one or the other of the craft bargaining units" (p. 17). To put it differently, work performed by rural carriers presumptively belongs to rural carriers, and work performed by city carriers presumptively belongs to city carriers. This is only a presumption, but Management must offer a sound reason and persuasive evidence if it is to overcome that presumption. Third, Article VII means what it says.

The Sioux Falls decision left open the question of what authority, if any, the Postal Service had for city-to-rural conversions in other circumstances and for other reasons. Because of the pressing nature of that question, the NALC President, Jim Rademacher, and the Director of the Postal Service's Office of Grievance Procedures, David Charters, met with Arbitrator Garrett. The only record of that meeting entered into evidence in this case is a memorandum from Charters to Regional Directors of Labor Relations dated June 9, 1975 (NALC Ex. 11) [referred to in this Opinion as the Charters memorandum]. According to that memorandum, a "basic premise" emerged from the meeting that "no significant amount of work that has traditionally been done by city letter carriers may be transferred to rural carriers (absent a material change in the nature of the work) except through the provisions of Article VII, Section 2.A." Perhaps more importantly, Charters wrote that "Service improvements, efficiency, or cost are, under the Agreement, not legitimate factors for consideration in making determinations of this nature." When city-to-rural conversions seem advisable for other reasons such as squaring off boundaries, Charters wrote, "such changes may be accomplished through exchanges of territory provided there is no significant net transfer of stops from city carriers to rural carriers, and also provided that both the NALC and NRLCA locals agree to the changes."

If the Charters memorandum binds the Postal Service today, it would obviously and easily resolve these and most of the other pending grievances. The parties therefore spent a good deal of effort debating the nature of his memorandum.

The Charters memorandum is not a provision of the NALC Agreement, nor is it a memorandum of agreement or a letter of intent. It is signed only by one party and it merely purports to record an interpretation. There is no evidence that Arbitrator Garrett or President Rademacher ever read it, let alone endorsed it. Furthermore, it is only an internal Postal Service document from an official in charge of grievances to labor relations regional directors. It thus is not as reliable or as binding as a formal agreement would be. The Postal Service and the NALC know how to write binding agreements when they want to. For reasons that do not appear in the record, they chose not to do so here. Finally, and more importantly for the present tripartite arbitration, the NRLCA was not a party to the meeting that resulted in the Charters memorandum or to the arbitrations that led up to it. Whatever the status of the memorandum in later disputes between the USPS and the NALC, it cannot control disputes between the USPS and the NRLCA or between the NALC and the NRLCA.

Nevertheless, the Charters Memorandum does reflect a reasonably authoritative contemporaneous reaction to the Sioux Falls award. It is therefore helpful but not controlling. To the extent it differs from or expands upon the Agreement or the relevant National level awards, it merely states the opinion of one high Postal Service official. It is worth noting that as late as 1980, the Postal Service issued a Step 4 decision that relied on the Charters memorandum as authoritative (NALC Ex. 30), and even at the arbitration hearing in this case the sole Management witness, Robert West, explained that the Postal Service still used the memorandum as a general guideline when making city-to-rural conversions. Despite those instances of reliance on the memorandum, the arbitration award that the Charters memorandum purports to interpret banned inter-craft work conversions only in certain limited circumstances, and those circumstances are not the ones at issue in these grievances. While the memorandum demonstrates that the Postal Service chose in 1975 to adopt a more restrictive stance on city-to-rural conversions, it remained free to change that stance.

b. The Oakton/Vienna Decision

The most recent and most persuasive arbitration decision that bears on the issue of city-to-rural conversions is the 1994 National level award of Arbitrators Mittenthal and Zumas in the Oakton/Vienna case. Like this case, Oakton/Vienna involved tripartite arbitration. Unlike this one and unlike Sioux Falls, the Oakton/Vienna case began as a work-acquisition claim by the NALC. Rather than merely protesting city-to-rural conversions, the NALC sought to take certain deliveries away from the NRLCA on the basis that demographic shifts had made formerly rural territory urban. Although Oakton/Vienna is a type of rural-to-city conversion case, the principles used to resolve it apply equally strongly to city-to-rural conversions.

The arbitrators relied heavily on Arbitrator Garrett's interpretation of Article VII in Sioux Falls and on his interpretation of Article I in his later 1975 West Coast decision (NALC Ex. 12). In his West Coast award, which involved neither the NALC nor the NRLCA, Arbitrator Garrett held that Article I protects the basic integrity of the separate craft units and "bars the transfer of existing regular work assignments from one national craft bargaining unit to another (absent any change in conditions affecting the nature of such regular work assignments), except in conformity with Article VII." Arbitrators Mittenthal and Zumas found that the West Coast award applies to the NALC and NRLCA because in 1975 the same National Agreement covered all four unions.

In light of those two awards, the arbitrators found that the prime factor in determining craft jurisdiction was past practice:

> From the standpoint of jurisdiction, the customary way of doing things becomes the contractually correct way of doing things. Work always performed by rural carriers in a given area is presumptively within NRLCA's jurisdiction just as work always performed by city carriers in a given area is presumptively within NALC's jurisdiction. This heavy reliance on "practice" was a means of insuring the stability of each craft bargaining unit. [P. 42]

Applying that principle to the NALC's work-acquisition claim, the arbitrators denied the grievance. The past practice of using rural carriers to serve the disputed territory governs at least until the "work is changed to such an extent that the 'established practice' can no longer be said to have persuasive force" (p. 52).

Because the Oakton/Vienna dispute differed in a critical respect from the present grievances — it represented a grab for new work rather than an effort to retain current work — it does not answer the questions posed in this case. The NRLCA's brief asserts flatly at p. 4 that

> When NALC lost *Oakton/Vienna*, it lost this case also. *Oakton/Vienna* controls this case, and the judgment and words of Messrs. Mittenthal and Zumas are dispositive.

The matter is not so simple. That case simply held that one union could not take over work long performed by members of a second union simply because the work is similar to that performed by the grieving union's members. The arbitrators did not address, and had no need to address, the question of whether and when Management could assign work from one union's jurisdiction to that of another. That remains an open question.

For immediate purposes, the most important aspects of the Oakton/Vienna award are its use of Arbitrator Garrett's decisions as providing crafts with a shield against most jurisdictional incursions and its endorsement of past practice as the surest guide to jurisdictional rights. Like their predecessor, Arbitrators Mittenthal and Zumas recognize that a party seeking to change a long-standing allocation of work can overcome the presumption in favor of the status quo only by producing a very strong justification. Whether that party is the NALC or the Postal Service matters not at all.

c. Other Relevant Authority

The remaining arbitral authority is of less relevance. One more decision by Arbitrator Garrett does shed some light on his West Coast decision, however. In an NALC grievance arising in the Miami area over a jurisdictional dispute with the APWU, Arbitrator Garrett in 1977 distinguished his West Coast award as involving the transfer of entire bid assignments from one craft to another (USPS Ex. 7). The Miami/Hollywood case, in contrast, involved "only a minor reassignment of work," and Article I incorporates not only the history of bargaining on a craft basis but also "a long history of day-to-day administration of the Postal Service." By making that distinction, he opened up some room for Postal Service innovation short of transfers of entire bid assignments. If Arbitrator Garrett's Sioux Falls and West Coast decisions provided crafts a shield against jurisdictional incursions, his Miami/Hollywood decision significantly trimmed that shield's size.

Some regional arbitration awards, notably J. Fred Holly's 1983 Venice, Florida decision (NALC Ex. 44) interpreted the POM provisions on rural-to-city conversions as applicable to city-

to-rural conversions. With due respect to those awards, they rest on the fundamentally flawed assumption that the Postal Service's failure to include city-to-rural conversions in the POM was simply an oversight. Absent some strong evidence of the "oversight," the better interpretive principle is that the POM covers only the listed situations. Perhaps the same principles should as a matter of logic or efficiency govern city-to-rural conversions, but that is not what the POM says. The Postal Service's later 1996 decision (USPS Ex. 5) to add express provisions on city-to-rural conversions demonstrates that the earlier section did not cover the situation. Because the new provisions far postdate the instant grievances and because they are the subject of a separate pending dispute, they do not govern this decision. I make no finding on their effect, if any, on grievances arising after their effective date.

C. The NRLCA's Procedural Objections

Apparently to the surprise of the NALC, the NRLCA's brief raised two procedural objections to these grievances. It argued that the parties' alleged "usages," "course of dealing," and "course of performance" amounted to a waiver of any right the NALC might have to assert its interpretation of the collective bargaining agreement, and it claimed that the grievances were barred by the doctrine of laches. The USPS's reply brief scrupulously avoided endorsing these NRLCA arguments.

Whatever merit the NRLCA's first argument might have is vitiated by the lack of evidence about the details of the parties' practices and by the rarity of city-to-rural conversions. The record contains no proof that the NALC ever (to quote the NRLCA's brief at 31)

> conducted itself in such manner and permitted the Postal Service a course of performance which warrant the reasonable construction of the contract language and the Charters Memorandum leaving the Postal Service free to assign or convert deliveries and routes to the rural delivery in the exercise of its Article 3 prerogatives.

Any waiver of contractual rights must be knowing, and there is not the slightest evidence that the NALC knowingly gave up any right to challenge city-to-rural conversions.

The second argument is even more technical. The legal doctrine of laches holds that an unreasonable delay in asserting one's rights can bar a belated claim if it severely prejudices another party. The NRLCA's brief (at 35, n.21) asserts that the length of time before the parties scheduled this case for arbitration while many other grievances were pending constitutes such an unreasonable delay. Apart from the parties' reservation of factual issues for later decision, the brevity of the record in this case makes it impossible to credit the NRLCA's argument. The record simply does not show the reasons for the delay in scheduling, so I cannot blame it on the NALC.

More importantly, the doctrine of laches concerns only a failure to assert one's rights in the first instance. The NALC apparently did assert its rights by promptly filing grievances over many city-to-rural conversions. That is certainly true of the only grievances before me. In litigation, rules of procedure specify how, and how quickly, a suit must progress once it is filed. In arbitration, the counterpart would be the time limits spelled out in a collective bargaining agreement's grievance article. One party's claim that another party violated those time limits would amount to a procedural arbitrability challenge. No party has suggested that the NALC violated the relevant provision of its collective bargaining agreement, Article 15, in processing these two grievances. There is thus no basis for holding that the NALC was guilty of an unreasonable delay.

D. Application

The best way to approach this case is by recognizing how narrow the issue presented really is. Two potentially large blocks of conversion cases are outside the scope of this case. First, it has been clear ever since Arbitrator Garrett's Sioux Falls, West Coast, and Miami/Hollywood decisions that the Postal Service has no authority to transfer whole bid positions from one craft to another for operational reasons except in conformity with Article 7, Section 2.A. Second, some cases of minor adjustments are too small to rise to the level of a contract breach. Moving a few deliveries from one craft to another for some legitimate operational reason, without a significant impact on the number of jobs or amount of income available to members of the losing craft, falls within Arbitrator Garrett's category (in his Miami/Hollywood decision) of "minor reassignments of work" justified by the Postal Service's "long history of day-to-day administration." Those routine minor adjustments are a logical part of Management's rights, protected by Article 3 of the Agreement.

These grievances present problems falling between those extremes because they involve the conversion of a sizeable number of deliveries without transferring entire bid assignments. Wherever the exact line between "a few" and "a sizeable number" of deliveries might fall, the 136 converted deliveries in Cary amounts to more than "a few." The number of converted deliveries in Placerville was even larger. The relevant number for the purpose of this classification is the *total* number of deliveries converted from one craft to another, not the *net* figure. If there is little or no net change, the possibility of a mutually satisfactory agreement increases, but the lack of net change does not eliminate either union's contractual right to its present work.

Within that middle ground, the primary controlling authorities are the parties' collective bargaining agreements. As interpreted by Arbitrators Garrett, Mittenthal, and Zumas, Article 1 (in both agreements) embodies the principle of craft integrity and Article 7 (in the NALC agreement) applies to conversions of work from one craft to another as well as to the combining of work from different crafts into a single position. Article 3 (in both agreements) protects Management's rights, "subject to the provisions of this Agreement"; in other words, it gives Management no power to overturn craft jurisdictions protected by the other articles. The

touchstone in all these cases is past practice. As the Oakton/Vienna award put it at p. 52, "the customary way of doing things is the most realistic guide to jurisdiction."

To summarize, in any jurisdictional dispute prompted by conversion of a sizeable number of deliveries from city to rural service, the union whose members have long performed the work presumptively retains the right to that work. However worthy in the abstract, operational justifications (such as a desire to square boundaries, eliminate commingling, and improve efficiency) do not by themselves overcome that presumption. The only exception to this rule is the one announced by Arbitrators Mittenthal and Zumas on the same page, "when work is changed to such an extent that the 'established practice' can no longer be said to have persuasive force."

The NALC challenges the Postal Service's city-to-rural conversion of 136 deliveries in Cary and 455 in Placerville that have been within its jurisdiction for many years. Because the Postal Service alleges neither that the work in question has changed enough to eliminate the "established practice" nor that it has satisfied the provisions of Article 7, it has failed to overcome the presumption in favor of NALC jurisdiction. The grievances must therefore be sustained.

Enforcing this long-standing principle does not unduly bind the Postal Service in these middle-ground situations, nor does it freeze in amber any current inefficient practices. The Postal Service has many ways to achieve the efficiencies expected by Congress. It can seek authority from Congress to make unilateral changes; it can negotiate changes in the National agreements; it can use its managerial powers to raise productivity within craft assignments; it can comply with the provisions of Article 7, Section 2.A. of the NALC agreement; and it can try to breathe life into the 1975 Memorandum of Understanding on jurisdictional disputes (NALC Exhibit 7). There may be other possibilities as well. The only thing that the Postal Service may *not* do, in light of its contractual commitments, is unilaterally shift a sizeable number of deliveries from city to rural service in violation of a still-viable established practice.

E. Remedy

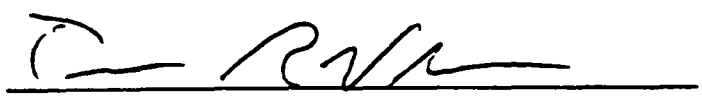
The parties limited their evidence to the narrowest possible issue. They did not even open the subject of the proper remedy. I shall therefore announce the remedial principle — that Management must restore the challenged deliveries to NALC jurisdiction and make whole any employees harmed by the conversions — and will remand the case to the parties. I shall retain jurisdiction to resolve any remedial disputes the parties are unable to answer.

AWARD

1. The grievances are sustained. The Postal Service violated the NALC agreement by unilaterally converting a sizeable number of deliveries in Cary, North Carolina and Placerville, California from city to rural service.

2. The Postal Service is directed to restore the challenged deliveries to NALC jurisdiction and to make whole any employees harmed by the conversions.

3. The parties are directed to negotiate over the implementation of this award. I shall retain jurisdiction to resolve any remedial disputes the parties are unable to answer.



Dennis R. Nolan, Arbitrator and Mediator

December 23, 1998
Date

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

November 7, 1988

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

Re: T. Keegan
Plant City, FL 33566
H4C-3W-C 15654

Dear Mr. Burrus:

On September 20, 1988, a prearbitration discussion was held between you and Bill Downes of this office on the above referenced case.

The issue in this case is whether the denial of Leave Without Pay (LWOP) for the purposes of working on a union newsletter violated the grievant's rights under Article 24.

During the discussion, mutual agreement was reached that any employee who has been selected as a full-time or part-time union representative may be granted leave without pay in accordance with Section 514.22 of the Employee and Labor Relations Manual to conduct union business. The grievance is remanded to the regional level to apply these provisions. If the parties are unable to resolve this case, it may be scheduled for regional arbitration.

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

May 8, 1985

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Burrus:

This is in response to your March 12 letter regarding the application of leave regulations in circumstances where employees request leave in increments of 8 hours or less for randomly selected days throughout a prolonged absence.

The leave regulations in Chapter 5 of the Employee and Labor Relations Manual allow leave charges for full-time, part-time regular, and part-time flexible employees in minimums of one hundreth of an hour. We are not aware of any position being taken with regard to minimal use of annual leave or any other paid leave or which restricts the right of employees to request leave in minimal amounts for nonconsecutive days.

Sincerely,

W. E. Henry

William E. Henry, Jr.
Director
Office of Grievance and
Arbitration
Labor Relations Department

American Postal Workers Union, AFL-CIO

817 Fourteenth Street, N.W., Washington, D.C. 20005 • (202) 842-4246

WILLIAM BURRUS
Executive Vice President

March 12, 1985

Dear Mr. Henry:

On March 7, 1985 you and I discussed the appropriate application of leave regulations in those circumstances where employees request leave in increments of 8 hours or less for randomly selected days throught a prolonged absence. Circumstances have arisen, most recently in Roanoke, Virginia, where such requests have been rejected by the employer for reasons other than insufficient medical documentation or general recognition of an illness incapacitating the employee from performing assigned duties. The instant case in Roanoke represented a request for "pregnancy leave," however the union's interpretation of the applicable language is not limited to "pregnancy leave" requests but would apply to all leave requests that would otherwise be approved but for the question of consecutive hours or days.

Chapter 5 of the Employee and Labor Relations Manual sets forth the leave program as recognized by Article 10 of the National Agreement. These provisions establish conditions for authorization, setting forth specific circumstances justifying the use of leave.

Section 513 provides that the "Minimum Unit Charge" for such leave request shall be "hundreth of an hour (.01 hour)." These provisions place no restrictions on the right of an employee to request leave in advance over a randomly selected period and the obligation of the Employer is to determine if such requests are consistent with those circumstances justifying leave usage.

Please respond as to the Employer's interpretation and application of the above cited provisions as applied to leave requests for non-consecutive days.

Sincerely,

William Burrus,
Executive Vice President

Bill Henry, Director
Office of Grievance and Arbitration
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

WB:mc

64B

American Postal Workers Union, AFL-CIO

817 Fourteenth Street, N.W., Washington, D.C. 20005 • (202) 842-4246

WILLIAM BURRUS
Executive Vice President

June 6, 1985

Dear Mr. Henry:

Please find enclosed a copy of district instructions (nearly illegible) that contradict the resolution we discussed on the rights of employees to use leave in sporadic intervals if the leave would otherwise be approved.

Please review and contact my office for discussion.

Sincerely,

William Burrus,
Executive Vice President

Bill Henry
Office of Grievance and Arbitration
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

WB:mc

Enc.

PAID LEAVE

It has been brought to my attention that some employees on long term absences have been Inappropriately using paid leave only before and/or after a holiday in order to receive holiday pay.

You are to review this abuse with finance immediately and bring the practice to a halt

The scheme works this way. An employee off work from February 1, 1985 til August 1st due to an illness. The employee has only 100 hours of sick leave and 20 hours annual leave. Recognizing that paid leave will run out quickly the employee decides to request leave only before and after the holiday occuring on February 16, May 27 and July 4th.

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260-0001

July 17, 1985

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Burrus:

This is in reference to your June 6 letter along with which you forwarded a copy of instructions issued in a Postal Service District pertaining to paid leave. You indicated that you believed the instructions to be inconsistent with the position taken in earlier correspondence and discussions between us relative to the use of leave in minimal amounts for nonconsecutive days.

We have looked into this matter. Please be advised that the instructions which prompted your letter have been rescinded. I trust that this action satisfactorily resolves the issue.

Sincerely,

W. E. Henry, Jr.

William E. Henry, Jr.
Director
Office of Grievance
and Arbitration
Labor Relations Department

h. Military duty for scheduled drills or for periods of training.	An employee enlisted under the Reserve Forces Act of 1955, who has completed the initial period of active duty training of not less than 3 months or more than 6 months may be granted LWOP *for scheduled drills or periods of training* (see 365.23).
i. Military duty for any purpose, *training or otherwise.*	Eligible members of the National Guard or reserve components of the Armed Forces *ordered to active duty for training or for any other purposes, for a specified period of time not to exceed one year, but in excess of the total time allowable under military leave and annual leave shall be granted LWOP.*
j. Postmaster elected to position of president of either the National Association of Postmasters of the U.S. or the National League of Postmasters.	(1) LWOP normally does not exceed 2 consecutive years coinciding with the elected term of office. (2) The postmaster requests in writing, through the appropriate management structure, that the Senior Assistant Postmaster General for Employee and Labor Relations (SAPMG, E&LR) grant postmasters LWOP during tenure of presidency for the purpose of serving as *resident* president of the employee organization in Washington, DC in a full-time capacity. (3) If LWOP is granted, the postmaster continues to be eligible for appropriate fringe benefits during that period. (4) The SAPMG, E&LR, reserves the right to deny the request for LWOP if it is determined that the position must be filled on a permanent basis, unencumbered by an individual on prolonged leave. (5) If the employee declines to request LWOP under the foregoing condition in order to serve as a full-time resident president, 519.272 applies.
k. Union business.	See applicable provisions of current Collective Bargaining Agreement.

514.5 Forms Required

.51 Form 3971. A request for LWOP is submitted by the employee on Form 3971, *Request for, or Notification of, Absence.* If the request for leave indicates the LWOP will extend over 30 days, a written justification and statement of reason for the desired absence is required.

.52 Form 50. Form 50, *Notification of Personnel Action,* is prepared when LWOP is in excess of 30 days.

515 Absence For Maternity/Paternity Reasons

515.1 Absence for Maternity Reasons

.11 Policy

.111 Temporary Incapacitation for Duty. Pregnancy is a condition which eventually requires the employee to be absent from the job because of incapacitation. For leave purposes, a period of absence covering pregnancy and confinement is to be treated like any other condition which incapacitates the employee from the performance of duty. As a means of accommodating this temporary incapacitation, appropriate leave is available to the employee.

.112 General Leave Policy Applies. Maternity absence is not a separate type of leave. The same leave policies, regulations, and procedures apply to absence for maternity reasons as apply to requests for leave generally.

.12 Granting Leave. Maternity absences may be a combination of sick leave, annual leave, and LWOP:

a. Sick Leave. To the extent available, sick leave may be used to cover the time required for physical examinations and periods of incapacitation.

b. Annual Leave or LWOP. Absence due to reasons such as the need for a period of adjustment following birth and recuperation, or for time to make arrangements for the care of the child, may be covered only by the use of available annual leave or LWOP if requested by the employee and approved by the appropriate management official. An employee need not exhaust sick and annual leave prior to requesting LWOP (see 514.4).

.13 Request for Leave. An employee informs her supervisors as soon as possible of her intention to request leave for maternity reasons and indicates the type of leave desired, approximate dates, and anticipated duration to allow the supervisor to prepare for any staffing adjustments which may be necessary. The length of absence from duty for maternity reasons is jointly determined by the employee, her physician, and management.

.14 Request For Light-Duty/Temporary Reassignment. Installation heads make every reasonable effort to accommodate requests for light duty or temporary reassignment to other available work for which the employee is qualified and which is requested due to maternity reasons. Such requests are accompanied by appropriate medical recommendations.

515.2 Absence For Paternity Reasons. A male employee may request only annual leave or LWOP for purposes of assisting or caring for his minor children or the

UNITED STATES POSTAL SERVICE

Washington, DC 20260

IN REPLY REF: RAL:FW

DATE: 5/19/78

SUBJECT: Military Leave for Probationary Employees

TO:

Fred Shelton
Office of Compensation

This responds to your recent telephone inquiry concerning military leave for employees during their probationary period.

The fact that an employee is in his probationary period has no effect on his right to military leave. Rather, an employee who would be entitled to military leave after completion of the probationary period is also entitled to that military leave during the probationary period. See old Postal Manual Part 721.731.

The effect of an absence for military purposes on an employee's completion of the probationary period is a more complicated question. The probationary period is tolled during military service, including military leave. The applicable procedure is provided in the U. S. Department of Labor's Legal Guide and Case Digest: Veterans Reemployment Rights Under the Universal Military Training and Service Act, As Amended, and Related Acts, §3.24 at 325:

> ... a probationary position is protected by the reemployment statutes.
>
> This does not mean, however, that military service can be counted toward completion of the probationary period. Where the probation involves a genuine evaluation of the employee's aptitude, skill, conduct and performance, the employee is entitled to return only to the probationary status he left; and after being reemployed, he must complete the remainder of his probationary period satisfactorily in accordance with the same standards (no higher, and no lower) as are applied to other probationers.

> Upon satisfactory completion of the probation, his seniority must be established as if he had remained continuously employed instead of entering military service.

Thus, for example, an employee who left work on military leave after completing 60 days of a 90-day probationary period would, upon returning from military leave, still face a 30-day probationary period. However, upon successful completion of the remaining 30 days of his probationary period, the employee would be credited with seniority for all purposes as if the military leave was time worked.

Richard A. Levin
Attorney
Office of Labor Law

cc: Arthur Eubanks

Discrepancies and Exceptions to Postal Service Letter dated 6 Feb 87

The following is a preliminary paragraph by paragraph analysis of the Postal Service letter written by John C. Goodman, Field Division General Manager/Postmaster of the St. Louis Division, showing the discrepancies as appropriate. The letter uses references to the Employee and Labor Relations Manual (E&LR) in an obvious attempt to make the paragraphs of the letter appear official and lend them a degree of credibility. It is important to note that several other sections of the E&LR manual have been conspicuously ommitted. Additionally, important information from the very sections being referenced has been left out, questionable paraphrasing has occured, and there has been inclusion of outright erroneous material. All this has been done apparently to substantiate the discouraging and negative attitude of the letter, and circumvent the true intent of the E&LR manual as well as Title 38 itself. A copy of the COMPLETE section (Section 517) of the E&LR manual is provided as an enclosure to assist investigation in this regard.

PARA #1 - Appears to be completely in order.

PARA #2 - The example cited in this paragraph is in direct conflict with Title 38 of the U.S. Code, as well as with further instructions as issued in the Department of Labor publication, Job Rights of Reservists and Members of the National Guard which explicitly states "The employee must return to work at the start of the next regularly scheduled shift after the expiration of the last calender day necessary to travel home from training or after he or she has had reasonable time to rest" (copy enclosed)

PARA #3 - Appears to be completely in order.

PARA #4 - A request for documentation as to the specific duty performed is clearly not required by the E&LR manual or Title 38. Additionally, this is an unreasonable administrative burden on the military in light of the fact that official documentation for periods of training is already provided. Furthermore, to require this additional documentation would in certain cases necessitate a security violation if the individual's duties were of a classified nature.

PARA #5 - Totally false and in direct conflict with Title 38. While there exists a 15 day limit on military leave with pay, there is NO LIMIT on military leave itself. This is further elaborated on in the E.S. Gram dated May 1984 from the National Committee for Employer Support of the Guard and Reserve. (copy enclosed) E L+R

PARA #6 - Contains the veiled threat of possible AWOL charges (a very serious offense and a term of degradation to most military personnel) based upon the erroneous and misleading information provided in PARA #5. It is interesting to note that neither the term AWOL nor the conditions for its implementation are mentioned anywhere in Section 517 of the E&LR manual.

PARA #7 - Although this paragraph aligns itself closely to the actual verbage of Section 517.721, it is the most offensive of all and the one that

evoked the most outrage among members of the Guard. The absense of any supportive statements and the mood established by the previous paragraphs makes the true meaning clearly evident. When reading between the lines and in light of the content and tone of the rest of the letter it is apparent to all but those using the most primitive analysis that what is said is not to bid on a job that doesn't conflict with military duties but to bid on a job that doesn't conflict with postal duties - and if so I feel that is a grieveous moral and legal error.

Paragraph Two: The example is not complete, but was intended to protect employees against charges of annual leave or leave without pay when the absence is beyond the legal limit of 15 calendar days, or when the day(s) of absence was not included in the Military Orders. (The reference may be found in E&LR Manual 517.122G & 517.631).

Paragraph Four: The first sentence of this paragraph states correct policy and what is expected as documentation in the Saint Louis Field Division. The second sentence is inaccurate and inappropriate. The information on duty that was performed was never demanded or expected.

Paragraph Five: Mr. Pitcher is correct in that there is no limit on military leave, only on paid military leave. The wording of the first sentence is poor, but the reference, E&LR 517.51, also limits granting military leave to 15 days without any reference to nonpay military leave.

Paragraph Six: There is no intended threat in this paragraph. It is added emphasis that an employee may experience use of annual leave or loss of pay if he/she has no annual leave or elects not to use it. Use of the term absent without official leave (AWOL) was unnecessary, however, there could be instances where an AWOL charge would be appropriate.

Paragraph Seven: The intent of this paragraph was to highlight a final alternative that employees may use to obtain maximum military leave without loss of pay.

The Saint Louis Field Division and Postmaster John Goodman do not have a negative attitude toward Military Leave. All postal officials are aware of the vital role played by the National Guard in our country's defense, and participation by employees is encouraged. Although the memo in question has been in use for over a year without any compiaint, it obviously contains some errors as pointed out by Mr. Pitcher. The term "military leave" has become synonymous with "paid military leave," and explanation of this this would have clarified the issue considerably.

The commanding tone of the memo was meant to reinforce the importance of understanding procedure in avoiding error. However, it seems clear from the perceptions of Mr. Pitcher, and those he talked to, that this tone had an undesirable side effect. We regret that we were not sufficiently sensitive to the implications of the tone of this memorandum.

Your constituent may be assured that improvement will be made in the handling of information on military leave in the Saint Louis Field Division.

If I may be of further assistance, please let me know.

Sincerely,

James V. Hitaffer

James V. Hitaffer
Representative
Office of Government Liaison

UNITED STATES POSTAL SERVICE

SAINT LOUIS, MO. 63155 - 9998

56C

OUR REF CED12:MDooley:314-436-3532:-9513:92-A06

DATE February 6, 1987

SUBJECT Military Leave

TO

Employees Requesting Military Leave

Per the policy/procedures outlined in the E&LR Manual, you have these responsibilities when requesting military leave:

1. You must be in a pay status either immediately prior to the beginning of military duty or immediately after the end of military duty in order to be entitled to military leave with pay. (E&LR 517.61)

2. You must make a request for leave for military duty on a Form 3971 and obtain your supervisor's approval before taking the leave. Leave for military duty will be granted only for the actual dates of the duty. On your next scheduled tour of duty, you are required to report to work. For example, an employee attends military duty on a Sunday but is scheduled to report to work on Sunday night at 2300 (11:00 PM). Since this is his Monday tour, he is expected to report to work at 2300 Sunday night. (E&LR 511.23)

3. You must submit a copy of official duty orders or official notices signed by the appropriate military authority for weekly, biweekly, monthly training meetings with the Form 3971 requesting leave for military duty. This will notify the Postal Service that you are scheduled for training. (E&LR 517.71)

4. You must submit a copy of military orders properly endorsed by appropriate military authority to show that the duty was actually performed upon return from military duty. This documentation must specifically state the duty that you performed. Failure to submit this documentation upon your return to work could cause your absence to be charged to AWOL. (E&LR 517.22)

5. You must not use more than fifteen (15) days of military leave per fiscal year if you are a full-time employee or more than eighty (80) hours per fiscal year if you are a part-time employee. A part-time employee's military leave allowance is further restricted in that he: See Section 517.6 subsection .633

a. Earns one (1) hour of military leave for each 26 hours that he was in a pay status in the previous fiscal year, and

b. He must have been in a pay status a **minimum** of 1,040 hours during the previous fiscal year. (E&LR 517.51)

6. You will be charged annual leave or leave without pay (LWOP) for absences in excess of your military leave allotment in a fiscal year. If military leave above your legal limit is erroneously granted and paid, it will be recovered and the absence charged to annual leave, leave without pay, or AWOL based upon the individual circumstances. (E&LR 517.6)

7. You should attempt to bid on a work assignment (when the opportunity presents itself) which will not conflict with your military duties. (E&LR 518.721)

If you have any questions concerning these responsibilities, contact your supervisor or timekeeper.

JOHN C. GOODMAN
Field Division General Manager/Postmaster
St. Louis Division
St. Louis, MO 63155-9998

I am enclosing a copy of the implementing settlement on the arbitration decision of the Nixon Day of Mourning. Also enclosed is a listing of employees in your office who were on the rolls but did not use administrative leave during the period following April 27, 1994 (Nixon Day of Mourning). This listing confirms that the employees were on the postal rolls on April 27, 1994 and are on the rolls on the date of settlement, ~~June 19~~ MAY 22, 1998. It will be necessary that the local parties confirm that:

* The listed employees qualify for the remaining eligibility criteria
* Whether or nor additonal employees qualify
* Whether or not the listed employees were granted administrative leave but failed to use it

You are to meet with local management to:

1. Review the listing of eligible employees

2. Determine the number of hours of administrative leave to be afforded to eligible part time employees. (If part time in 1994 and full time in 1998 employee is to receive 8 hours of Administrative Leave). If full time in 1994 and part time in 1998, employee to receive the average hours worked during week of May 23-29, 1998

3. Reach agreement on the procedures for requesting and using administrative leave consistent with the provisions of this agreement and the Local Memorandum of Understanding insuring that every eligible employee has an opportunity to use leave prior to deadline.

4. Reach agreement on a procedure for reviewing appeals for eligibility by employees who are not identified by the local parties.

A summary of the agreement is as follows:

ELIGIBLE EMPLOYEES

A. On the postal rolls on April 27, 1994 and on the postal rolls in APWU Craft on ~~June 19~~ MAY 22, 1998 (the intervening time does not have to be continuous or within the same craft or bargaining unit)

B. Did not receive Administrate Leave because of leave or schedule off day on April 27, 1994 and was not credited with Administrative Leave but failed to use it

C. Not pending removal (off the postal payroll) on ~~June 19~~ MAY 22, 1998

D. If AWOL - On Suspension - Pending Removal on April 27, 1994 - was returned to duty and made whole for the period of the AWOL, Suspension or Removal. (If made whole for a partial period of a suspension or removal the partial make whole period will be applied to begin with the last date of the suspension or removal and applied for consecutive days to determine if employee was in a pay status on April 27, 1994).

INELIGIBLE EMPLOYEES

A. Not on the postal rolls on April 27, 1994 or postal rolls APWU craft ~~June 19~~ MAY 22, 1998

B. Not in the APWU bargaining unit on ~~June 19~~ MAY 22, 1998 (Promoted to supervisor-EAS position or transfer to non-APWU craft)

C. Previously received Administrative Leave for April 27, 1994 whether used of failed to use prior to deadline

D. In AWOL status, Suspended or pending Removal on April 27, 1994 and AWOL, Suspension or Removal not reversed

E. Pending Removal on June 19, 1998 (after exhaustion of 30 day advance

notice). If returned to work, with or without back pay, employee will be eligible if they were on the rolls on April 27, 1994 and must use leave within 60 days of return.

F. Transitional Employees

The national parties have made every effort to reach mutual agreement on the implementation of this issue and that agreement includes all anticipated issues. The local parties are responsible for resolving all disputes arising out of this agreement. Disagreements are not anticipated but any unresolved issues will be referred to Article 15 contractual grievance procedure.

William Burrus

IMPLEMENTATION AGREEMENT
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION

The parties agree that the following will apply in the implementation of Arbitrator Das's award in case Q90C-6Q-C 94042619 concerning the Nixon Day of Mourning.

Eligible employees who were on the rolls on April 27, 1994, and who are on the rolls on May 22, 1998, in the APWU bargaining unit, will be granted administrative leave as described below.

This administrative leave is to be taken all at one time, and must be used no later than Friday, December 4, 1998 (PP 25, 1998), except as noted below. The administrative leave may, at the employee's option, be substituted for annual leave which was previously scheduled but has not yet been used. In the alternative, the employee may request administrative leave under the same procedures which govern the request and approval of annual leave.

Eligible employees:

This settlement is intended to grant administrative leave to employees who did not work on April 27, 1994 (either because they were not scheduled to work on that day or because they had leave for that day), and who did not receive administrative leave on that day. Leave entitlement will be as follows:

- Full-time employees covered by this settlement will be granted 8 hours of administrative leave.

- Part-time flexible employees covered by this settlement will be granted administrative leave equal to the average number of daily paid hours during the week of May 16-22, 1998, not to exceed 8 hours.

- Part-time regular employees covered by this settlement will be granted administrative leave equal to the number of daily hours in their regular schedule as of May 22, 1998, or if their regular schedule contains a different number of hours on different days, they will be granted administrative leave equal to the average number of daily hours in their schedule for the week of May 22, 1998, not to exceed 8 hours.

Ineligible employees:

This settlement does not apply to employees who have already received administrative leave or who had the opportunity to use administrative leave in connection with the Nixon Day of Mourning, and such employees are not entitled to any additional administrative leave as a result of this settlement. This includes the following employees:

- employees who did not work on April 27, 1994, and who received administrative leave for that day.

- employees who worked on April 27, 1994, and who subsequently had the opportunity to use administrative leave, as a result of the Joseph J. Mahon, Jr., letter dated April 26, 1994 (copy attached).

This settlement does not cover Transitional Employees (TEs), as TEs are not entitled to administrative leave in connection with the Nixon Day of Mourning.

Employees who were absent on April 27, 1994 due to absence without leave (AWOL) or for disciplinary reasons (suspension or pending removal) will not be entitled to administrative leave under this settlement unless they were returned to duty and made whole for the time period including April 27, 1994, and provided they are otherwise eligible by the terms of this settlement.

Employees who, as of the date of this settlement, are absent pending removal, will not be entitled to this administrative leave unless they are returned to duty and are otherwise eligible by the terms of this settlement. In such cases, the administrative leave must be used within 60 days of their return, if they return to duty after October 3, 1998.

The parties at the local level will share responsibility for identifying and resolving any disputes as to specifically which employees are entitled to administrative leave under this settlement. The parties will meet and identify the eligible employees no later than July 24, 1998. Following the identification of eligible employees, letters will be issued to those employees informing them that they are eligible.

The union at the national level will provide a list of other eligible employees who were on the rolls April 27, 1994 and on the rolls on the date of this settlement, and who were not granted administrative leave in 1994.

The parties agree that this settlement will not be cited or used as precedent in any future discussions or in any other forum whatsoever, other than to enforce the terms of the settlement itself.

John E. Potter
Senior Vice President
Labor Relations

6/19/98
Date

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

6/19/98
Date

Attachment

JOSEPH J. MAHON JR.
VICE PRESIDENT, LABOR RELATIONS

UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

April 26, 1994

ALL POSTAL INSTALLATIONS

SUBJECT: National Day of Mourning - Administrative Directions

Reference is made to the April 26, 1994, Memorandum for all Postal Installations concerning the National Day of Mourning - Administrative Directions, which memorandum was issued by Messrs. Porras and Mahon.

Representatives of the Postal Service and the APWU met to discuss the April 26, 1994 memorandum and have reached agreement or clarified several issues, which appear in the attached April 26, 1994 memorandum from Moe Biller to his various resident officers, regional coordinators and national business agents. The parties agreed that future administrative leave taken, which must be granted and used by September 16, 1994, is to be taken at one time. Moreover, such administrative leave may, at the employee's option, be substituted for previously scheduled annual leave. In the alternative, the employee may apply for administrative leave by using the same procedures which govern annual leave.

Additionally, where April 27 is the full-time employee's non-scheduled day and the employee is scheduled to work on April 27, the employee will receive overtime pay, plus future administrative leave for the number of hours worked, up to 8 hours. Further, employees on suspension or OWCP will not receive administrative leave.

The parties did not agree that those employees who are non-scheduled or on leave for any reason should receive administrative leave. The Postal Service position remains that employees who are non-scheduled or on leave for any reason will not receive administrative leave or any extra compensation. Also, there is a dispute as to whether transitional employees (TEs) should receive administrative leave. The Postal Service position remains that TEs will not receive administrative leave and only will receive pay for actual work hours performed on April 27, 1994.

Accordingly, the April 26, 1994 memorandum which was issued by Messrs. Porras and Mahon, as clarified by this memorandum shall serve as the necessary administrative directions for the National Day of Mourning.

for Anthony J. Vegliante
Joseph J. Mahon, Jr.

Attachment

202-268-3619
FAX 202-268-3074

UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260

Mr. Thomas A. Neill
Industrial Relations Director
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: H7C-NA-C 83
W. Burrus
Washington, DC

Dear Mr. Neill:

Recently, Bobby Kennedy and Randy Sutton met in a prearbitration discussion of the above-referenced case.

The issue in this grievance concerns the utilization of paid leave requested in conjunction with holidays, when the request originates from an employee in an extended leave without pay (LWOP) status.

The parties mutually agree it is inappropriate for employees in an extended LWOP status to manipulate the utilization of paid leave for the purpose of obtaining paid holidays. The parties further agree management should not deny paid leave requests from employees in an extended LWOP status solely because it provides an entitlement to a paid holiday.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case and remove it from the pending national arbitration listing.

Sincerely,

David P. Stanton
for Anthony J. Vegliante
Manager
Grievance and Arbitration
Labor Relations

Thomas A. Neill
Industrial Relations Director
American Postal Workers
Union, AFL-CIO

Date: 10-29-93

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

The United States Postal Service, the American Postal Workers Union, AFL-CIO, and the National Association of Letter Carriers, AFL-CIO, hereby agree to resolve the following issues which remain in dispute and arise from the application of the overtime and holiday provisions of Articles 8 and 11 of the 1984 and 1987 National Agreements. The parties agree further to remand those grievances which were timely filed and which involve the issues set forth herein for resolution in accordance with the terms of this Memorandum of Understanding.

12 Hours In A Work Day and 60 Hours In A Service Week Restrictions

The parties agree that with the exception of December, full-time employees are prohibited from working more than 12 hours in a single work day or 60 hours within a service week. In those limited instances where this provision is or has been violated and a timely grievance filed, full-time employees will be compensated at an additional premium of 50 percent of the base hourly straight time rate for those hours worked beyond the 12 or 60 hour limitation. The employment of this remedy shall not be construed as an agreement by the parties that the Employer may exceed the 12 and 60 hour limitation with impunity.

As a means of facilitating the foregoing, the parties agree that excluding December, once a full-time employee reaches 20 hours of overtime within a service week, the employee is no longer available for any additional overtime work. Furthermore, the employee's tour of duty shall be terminated once he or she reaches the 60th hour of work, in accordance with Arbitrator Mittenthal's National Level Arbitration Award on this issue, dated September 11, 1987, in case numbers H4N-NA-C 21 (3rd issue) and H4C-NA-C 27.

Holiday Work

The parties agree that the Employer may not refuse to comply with the holiday scheduling "pecking order" provisions of Article 11, Section 6 or the provisions of a Local Memorandum of Understanding in order to avoid payment of penalty overtime.

The parties further agree to remedy past and future violations of the above understanding as follows:

1. Full-time employees and part-time regular employees who file a timely grievance because they were improperly assigned to work their holiday or designated holiday will be compensated at an additional premium of 50 percent of the base hourly straight time rate.

2. For each full-time employee or part-time regular employee improperly assigned to work a holiday or designated holiday, the Employer will compensate the employee who should have worked but was not permitted to do so, pursuant to the provisions of Article 11, Section 6, or pursuant to a Local Memorandum of Understanding, at the rate of pay the employee would have earned had he or she worked on that holiday.

The above settles the holiday remedy question which was remanded to the parties by Arbitrator Mittenthal in his January 19, 1987 decision in H4N-NA-C 21 and H4N-NA-C 24.

William J. Downes
Director, Office of
Contract Administration
Labor Relations Department

DATE 10/19/88

Thomas A. Neill
Industrial Relations Director
American Postal Workers
Union, AFL-CIO

DATE 10/19/88

Lawrence G. Hutchins
Vice President
National Association of
Letter Carriers, AFL-CIO

DATE 10/19/88

Biller Dissert.

47

Jill: Court Leave

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

May 24, 1984

Mr. Moe Biller
President
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Mr. Vincent R. Sombrotto
President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001-2197

Gentlemen:

As you may be aware, the Postal Service's court leave regulations have been called into question in certain discrimination suits brought against the Postal Service. Most recently, in Stup v. Bolger, Civil Action No. 83-0205-A (February 7, 1984), a district court held that our denial of compensation to an employee testifying on behalf of a Title VII plaintiff was inequitable. While we believe that our court leave regulations are legally sound, and that the decision in the Stup case does not require any change in those regulations, we recognize an element of unfairness in not providing compensation for plaintiffs' witnesses in such cases. Accordingly, the Postal Service proposes to expand the definition of court leave contained in section 516.31 of the Employee and Labor Relations Manual, as follows (substantive changes underscored):

> 516.31 Definition. 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 or to serve as a witness in a nonofficial capacity on behalf of a state or local government or 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, the Canal Zone, or the Trust Territory of the Pacific Islands. Judicial proceedings contemplate any action, suit, or other proceedings of a judicial nature, but do not include administrative proceedings such as hearings conducted pursuant to 650, Adverse Personel Action-Grievance and Appeal (Nonbargaining).

Consistent with this revision, the Postal Service also proposes to change the following related sections of the court leave regulations:

516.1 Absences for Court or Court Related Service

Nature of Service	Court Leave	Official Duty	Annual Leave or LWOP
II. Witness Service			
(C) on behalf of private party			
(2) not in official capacity			
(a) USPS a party	X		
(b) USPS not a party			X

516.331 Pay Status Requirement. Court leave is granted only to eligible employees who, except for jury duty, service as a witness in a nonofficial capacity on behalf of a state or local government, or service 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, would be in work status or on annual leave. An employee on LWOP when called for such court service, although otherwise eligible for court leave, is not granted court leave, but may retain any fees or compensation received incident to court service.

516.332 Employee on Annual Leave. If an eligible employee while on annual leave is summoned for jury duty, service as a witness in a nonofficial capacity on behalf of a state or local government, or service as a witness in a nonofficial capacity on behalf of a private party in a judicial proceeding to which the Postal Service is party or the real party in interest, while on annual leave, the employee's annual leave is cancelled and the employee is placed on court leave for the duration of such court service. Employees who are not entitled to court leave must use annual leave or LWOP for the period of absence from duty for such court service.

516.43 Witness Services in a Nonofficial Capacity on Behalf of a Private Party. An employee who testifies in a nonofficial capacity (as a private individual) on behalf of a private party is not performing official duty. The employee's absence is charged to court leave if the testimony is given in a judicial proceeding to which the Postal Service is a party or the real party in interest (see 516.31). If the Postal Service is not a party or the real party in interest, the employee's absence is charged to annual leave or LWOP and the employee may retain any fees or compensation received for such witness service.

As you can see, under these proposed revisions, the Postal Service would continue to provide court leave to employees serving as jurors or testifying on behalf of a state or local government, and, in addition, would provide court leave to employees testifying on behalf of private parties in judicial proceedings brought by or against the Postal Service. Thus, for example, court leave would be provided to employees testifying on behalf of plaintiffs in Title VII discrimination suits brought against the Postal Service.

If you have no objection to the above revisions, please notify Ned Braatz of my staff at 245-5158. We will then take the necessary action to implement these changes.

Sincerely,

James C. Gildea

James C. Gildea
Assistant Postmaster General
Labor Relations Department

American Postal Workers Union, AFL-CIO
817 Fourteenth Street, N.W., Washington, D.C. 20005 • (202) 842-4246

WILLIAM BURRUS
Executive Vice President

March 12, 1984

James C. Gildea
Assistant Postmaster General
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W
Washington, D.C. 20260

Dear Mr. Gildea:

The United States District Court for the Eastern District of Virginia in the case of Douglas H.Stup v. William F. Bolger, Civil Action No. 83-0205-A decided that the plaintiff was entitled to court leave even though he was not testifying in an official capacity. This decision differs from USPS interpretation of leave provisions governing court leave. Is it the intent of the Postal Service to modify existing interpretation and practice to conform to this decision?

Sincerely,

William Burrus,
Executive Vice President

WB:mc
court leave

IN THE DISTRICT COURT OF THE THIRTEENTH JUDICIAL DISTRICT OF THE STATE OF MONTANA IN AND FOR THE COUNTY OF CARBON

STATE OF MONTANA, Plaintiff, vs. KENT ALLEN SANDERSON, Defendant.	No. DC 82-02

SUBPOENA

THE STATE OF MONTANA TO _____

YOU ARE COMMANDED to appear and attend before our District Court of the Thirteenth Judicial District of the State of Montana, in and for the County of Carbon, at a term of said Court to be held at the Courthouse, at Billings, in the County of Yellowstone, on the 12th day of April, 1983, at 9:00 o'clock a.m., then and there to testify as a witness on behalf of the Defendant in the above-entitled action now pending in said District Court, and disobedience will be punished as a contempt of said Court, and will also forfeit to the party aggrieved the sum of One Hundred Dollars, and all damages which may be sustained by your failure to attend. By Order of the Court.

Given under my hand and the seal of said Court, this 11 day of April, 1983.

GAYLE STRAUSBURG, Clerk of Court

(COURT SEAL)

By: _____

350 Court Leave (See ELM 516)

351 Definition

Court leave is the authorized absence (without loss of, or reduction in, pay, leave to which otherwise entitled, credit for time or service, or performance rating) of an employee from work status for jury duty or for attending judicial proceedings in a nonofficial capacity as a witness on behalf of a state or local government.

352 Eligibility

352.1 Eligibility Chart

Employee Category	*Eligible*
Full-time	yes
Part-time regular	yes
Part-time flexible	no
Casual	no
Temporary	no

352.2 Noneligibles

Employees not eligible for court leave must use annual leave or LWOP to cover the period of absence from duty for such court service.

352.3 Other Factors

Court leave is granted only to eligible employees who, but for jury duty of service as a witness in a non-official capacity on behalf of a state or local government, would be in a work status or on annual leave. Eligible employees who are summoned for such court service while on annual leave are placed in a court leave status for the duration of the court service. Eligible employees on LWOP when called for such court service are not granted court leave, but may retain any fees or compensation incident to such service.

352.4 Rural Carriers

Court leave for rural carriers is discussed in Chapter 5.

353 Authorization and Supporting Forms

353.1 Installation heads (or their designees) are responsible for ascertaining the exact nature of court service in order to determine whether the employee is entitled to court leave. If a summons to witness service is not specific or clear, the installation head contacts appropriate authorities to determine the party on whose behalf the witness service is to be rendered. (For information as to court service which constitutes "official duty" status, see ELM 516.4.)

353.2 When it is determined that the court service is of such a nature as to entitle an eligible employee to court leave, the employee should initiate a Form 3971 and present it to his supervisor for action. (Employees who are not eligible for court leave for such service also use a Form 3971, requesting annual leave or LWOP, to cover their absence from duty.)

JOHN MELCHER
MONTANA

Burns - Pyl 47 D

United States Senate

June 17, 1983

RECEIVED

JUN 21 1983

OFFICE OF
PRESIDENT

The Honorable William F. Bolger
Postmaster General
United States Postal Service
475 L'Enfant Plaza West SW
Washington, D. C. 20260

Dear Mr. Postmaster:

Because of a technicality in the National Agreement, pertinent section enclosed, a Postal Service employee in Montana was required to take leave without pay, or lose annual leave, because he was subpoenaed to appear in court on behalf of a defendant. By order of the court, he would have been forced to pay $100 to the aggrieved party, plus "all damages, which may be sustained by your failure to attend".

Apparently, if he had been subpoenaed by the State or local government as their witness, he would have suffered no loss of pay. This seems a strange tilt "of justice" on behalf of the State, to say the least.

For example, as interpreted by your managers, a postal worker who witnesses an accident in which a government vehicle collides with a private car as a result of the government driver's negligence, could be called as a witness for the government and suffer no loss of pay. But if subpoenaed by the private driver as a witness for the plaintiff, he would personally suffer loss in pay under threat of a substantial fine if he failed to testify.

Federal employees' court leave is not so restricted, and certainly should not be. Your policy is not only unfair to the subpoenaed postal employee, it is unfair to the litigant who is a private citizen. His witnesses are obviously under a strain not suffered by the State witnesses.

I hope you can take the necessary steps to amend this unfair provision at the earliest opportunity.

Best regards.

Sincerely,

John Melcher

Enclosure

cc: Moe Biller
Morris Harrell
Vincent Sombrotto

WASHINGTON D.C. 20510 (202) 224-2644

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

REGIONAL GUIDELINES

ACCOMMODATION TO EMPLOYEES' RELIGIOUS NEEDS

The Civil Rights Act of 1964, as amended in 1972, prohibits employment discrimination by federal agencies, including the Postal Service, based on religion as well as race, color, sex, age or national origin. 42 U.S.C. 2000e-16. "The term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance practice without undue hardship on the conduct of the employer's business." 42 U.S.C. 2000e(j). The Civil Service Commission, which has the statutory authority to issue regulations binding on the Postal Service and other federal agencies to enforce the anti-discrimination provisions of 42 U.S.C. 2000e-16, has directed that agencies shall:

> Make reasonable accommodations to the religious needs of applicants and employees, including the needs of those who observe the Sabbath on other than Sunday, when those accommodations can be made (by substitution of another qualified employee, by a grant of leave, a change of a tour of duty, or other means) without undue hardship on the business of the agency. If an agency cannot accommodate an employee or applicant, it has a duty in a complaint arising under this subpart to demonstrate its inability to do so . . .
> (5 C.F.R. 713.204(g))

In seeking to apply this general concept to actual situations, there is no apparent mechanical test for determining the circumstances in which a requested accommodation may properly be rejected because it will create undue hardship on the conduct of Postal Service business. Rather, the exercise of informed judgment on a case-by-case basis seems necessary. Following are some general guidelines which may be of assistance in handling particular situations that may arise.

(1) Determine first whether there is a persuasive basis for

denying the employee's request for accommodation on the ground that it is not the result of an honestly held religious belief. Although this factor would be considered, it must be recognized that, in most instances, there is either no reasonable basis, or probably an inadequate basis, for questioning the genuineness of a particular employee's asserted religious convictions.

(2) Ascertain the precise actions that would be required to accommodate the employee's religious needs. In doing so, consider the broadest range of alternatives. Experience to date has indicated that the majority of the requests for accommodation have involved refusals by employees to work on days they designate as their Sabbath. Other requests have involved, or may involve, such matters as dress (for example, wearing a skullcap or a fez), appearance (for example, having a beard or long hair), refusals to work on religious holidays, or requests to attend religious meetings or conventions. In some circumstances, all that is necessary to accommodate the employee is the waiver of a relatively minor uniform regulation or a slight shift in scheduled hours. In other circumstances, thought must be given to more radical alternatives, such as shifting the employee to another tour, another job, or even another installation. The mere fact that such shifts ordinarily have not been permitted is not a sufficient reason to reject that type of action summarily, particularly where it will suffice to accommodate an employee's religious beliefs.

The critical question is whether there is any rational basis for making accommodation possible, and that question must be answered with reference to the Postal Service as a whole and not merely upon consideration of a particular installation. Thus, if a small installation is unable to accommodate the religious needs of a Sabbatarian, but a much larger neighboring installation can, the Postal Service will not be excused from its duty to accommodate merely because the local installation head did not have independent authority to effect a transfer. The matter must be brought to the attention of those officials at the appropriate management level who have such authority. In short, where an accommodation cannot be made at the installation level, it is essential that reasonable efforts to accommodate the employee be undertaken at the sectional center, district, and regional levels.

(3) If an accommodation cannot be worked out by local and regional officials which satisfies the employee, the reasons therefore are to be clearly established and documented. The relevant case file should contain copies of all correspondence and memoranda of all discussions with the employee which were involved in the effort to reach a satisfactory understanding. The file should state, in detail and with precision, the

reasons why the accommodation requested by the employee would create "undue hardship on the business of the agency." In this regard, mere inconvenience will not be deemed to satisfy the "undue hardship" test. Indeed, any accommodation is likely to cause some inconvenience to the employer and create a degree of resentment among other employees. Therefore the showing of more substantial adverse impact must be made in order to provide reasonable support for a refusal to accommodate.

(4) Where the primary bar to accommodating an employee is a Postal Service regulation or the provisions of a collective bargaining agreement, consideration should be given to obtaining a waiver of the regulation from the appropriate higher level postal authority or a waiver of the collective bargaining provision from the appropriate union officials. Although local union officials should be consulted as to their views regarding a possible waiver, no final commitment should be made without approval of the Regional Director, Employee and Labor Relations. Requests for such approval should be included in the memorandum report required by item (6) below.

The most difficult situations to resolve will likely be those in which waiver of a regulation or the provisions of a collective bargaining agreement would have an adverse impact on other employees, as, for example, by infringing on their seniority rights. The law is still unsettled as to whether adverse affect on the seniority rights of other employees provide an employer with a substantial and demonstrable basis for refusing to accommodate an employee's religious needs. The Supreme Court has agreed to review a case which presents that issue - TWA v. Hardison, 45 L. Week 3359 (Nov. 15, 1976) - but a decision is still some months away. However, in the case of Parker Seal Co. v. Cummins, 45 L. Week 4009 (Nov. 2, 1976), the Supreme Court has left in affect, for the present, an opinion by the U. S. Court of Appeals for the Sixth Circuit which held that a company violated Title VII of the 1964 Civil Rights Act, as amended, by discharging a foreman who refused to work on Saturday because of his religious convictions. The company had argued that it had accommodated the foreman until other employees complained about the extra burden such accommodation had imposed on them, and that it had discontinued its practice of permitting the foreman to avoid Saturday work only as a result of those complaints. The Court of Appeals concluded, however, that complaints by other employees were not a sufficient basis to relieve the company of its obligations to accommodate. On review, the Supreme Court affirmed the Sixth Circuit, but did so by a 4-4 vote and without written opinion. Justice Stevens, who had disqualified himself from participating in the Parker Seal case because of a prior

connection with one of the parties, presumably will participate in the Hardison case, which, hopefully, will produce a clear majority view to clarify the issue.

(5) In order to comply with the Privacy Act, 5 U.S.C. Section 552a(e)(7), when an employee requests an accommodation, the local official should secure a statement authorizing the Postal Service to maintain those records that are reasonably required. For example, such a statement might read:

> Recognizing the provision contained in the Privacy Act, 5 U.S.C. Section 552a(e)(7), which with certain exceptions, prohibits any records from being maintained describing how any individual exercises First Amendment rights, I hereby expressly authorize the Postal Service to maintain whatever records shall be reasonably required to accommodate my religious beliefs.

(6) Report, by memorandum, to the Director, Office of Equal Employment Opportunity, all requests for religious accommodation. The memorandum should state the nature of the request, the efforts made to achieve an accommodation, and, either the nature of the accommodation arrived at, or the reasons why a satisfactory accommodation could not be arrived at. Such information should permit Headquarters Employee and Labor Relations to assess the scope of the problem and provide specific guidance as needed.

17 4 5/9/77 54A

ACCOMMODATION TO EMPLOYEES' RELIGIOUS NEEDS

The Civil Rights Act of 1964, as amended in 1972, and various Court decisions to date, places certain obligations on an Employer to reasonably accommodate an employee's or prospective employee's religious belief, provided there is no undue hardship on the conduct of the Employer's business. The law is still unsettled as to precisely what an Employer must do in order to fulfill its obligation to "reasonably accommodate an employee's request." In light of this and the extremely complex legal issues involved, when an employee or applicant for employment asserts his or her religious beliefs and this precludes him or her from working at any particular time, the installation head should, through appropriate channels, immediately request the advice of the Regional Director for Employee and Labor Relations. No action should be taken on the employee's or prospective employee's request without direction from the Region.

Employee Relations Department

ATTACHMENT #0

(4) SENIORITY CANNOT BE IGNORED TO ACCOMMODATE RELIGIOUS OBSERVANCES. ACCOMMODATIONS CAN BE MADE BUT NOT INCONSISTENT WITH CONTRACT.

Since the publication of Postal Bulletin, May 19, 1977, the Supreme Court has issued an opinion interpreting the Civil Rights Act of 1964, as amended. This decision clarifies the problem covered by the Postal Bulletin.

The Supreme Court on June 16, 1977, in a case, which has come to be known as the Hardison case, decided that where an employer had entered into a collective bargaining contract containing seniority provisions, the seniority provisions would prevail. Hardison was a member of a religious organization known as the Worldwide Church of God. One of the tenets of that religion is that one must observe Sabbath by refraining from performing any work from sunset on Friday until sunset on Saturday (the religion also proscribes work on certain specified religious holidays). Hardison refused an assignment to work on Saturdays. He was employed by TWA which had a collective bargaining agreement with the Machinists. Section 703a(1) of the Civil Rights Act of 1964, Title VII, 42 U.S.C. 2000e 2(a)(1) makes it an unlawful employment practice for an employer to discriminate against an employee, or a prospective employee, on the basis of his or her religion. The Act itself also provides that an employer short of "undue hardship" make "reasonable accommodations" to the religious needs of its employees. The issue in this case was to determine the extent of the employer's obligation to accommodate an employee whose religious beliefs prohibited him from working on Saturdays where there existed a collective bargaining agreement, which included seniority provisions.

The Court spelled out its interpretation quite clearly in the following language:

> "Hardison and the EEOC insist that the statutory obligation to accommodate religious needs takes precedence over both the collective bargaining contract and the seniority rights of TWA's other employees. We agree that neither a collective bargaining contract nor a seniority system may be employed to violate the statute, but we do not believe that the duty to accommodate requires TWA to take steps inconsistent with the otherwise valid agreement. Collective bargaining, aimed at effecting workable and enforceable agreements between management and labor, lies at the core of our national labor policy, and seniority provisions are universally included in these contracts. Without a clear and express indication from Congress, we cannot agree with Hardison and the EEOC that an agreed-upon seniority system must give way when necessary to accommodate religious observances."

How will this decision affect the APWU? The answer now is clear. The seniority provisions of the collective bargaining agreement would prevail.

Donald M. Murtha

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

September 24, 1997

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Mr. Burrus:

This letter is in response to your August 27 correspondence claiming that the Allegheny Area has taken the position that even if an excessing is the result of automation, if the realignment of employees is identified in a Function Four Analysis, the union is not entitled to an impact statement.

In investigating this matter, it was found that your assertion of the Allegheny Area's position is incorrect. The Allegheny Area understands the obligations of the Postal Service as it relates to the September 20, 1989, agreement reached between the parties and the differentiation of an unrelated Function Four review.

That 1989 Memorandum of Understanding (MOU) addresses notification requirements to APWU regional level representatives only in those instances when an automation and mechanization change is being implemented that directly impacts the bargaining unit. It also requires the Postal Service to provide the impacts in the form of the Manpower Impact Reports outlined in the attachment to the agreement.

However, if a Function Four review is not a direct result of an automation implementation impact, which was the case in the Allegheny Area, then it is not necessary to provide a 90 day or 6 month notification or impact statements. The Allegheny Area has communicated this distinction to both APWU Regional representatives on several occasions.

If there are any further questions concerning this matter, please do not hesitate to contact Peter A. Sgro of my staff at (202) 268-3824.

Sincerely,

Samuel M. Pulcrano
Manager
Contract Administration APWU/NPMHU

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

UNITED STATES POSTAL SERVICE
ROOM 9014
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
TEL (202) 268-3816
FAX (202) 268-3074

SHERRY A. CAGNOLI
ASSISTANT POSTMASTER GENERAL
LABOR RELATIONS DEPARTMENT

September 18, 1991

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This letter is in further regard to your correspondence of July 25, requesting the position of the Postal Service when vacancies are witheld under Article 12 in anticipation of excessing.

The position of the Postal Service concerning the general number of anticipated excessed positions and the number withheld remains consistent with the intent of the Memorandum of Understanding regarding Article 7, Section 3.A., dated September 20, 1989. Such withholding must be based on valid complement projections.

If there are any questions concerning this matter, please contact Stan Urban of my staff at 268-3823.

Sincerely,

Sherry A. Cagnoli

American Postal Workers Union, AFL-CIO
1300 L Street, NW, Washington, DC 20005

July 25, 1991

William Burrus
Executive Vice President
(202) 842-4246

Dear Ms. Cagnoli:

Article 12 provides for the employer's right to withhold vacancies for anticipated excessing to accomodate displaced employees. When applied correctly these provisions permit the orderly transfer of employees. Division managers, however are using these provisions as a shield to proper planning. Positions are being withheld Division-wide without the establishment of a relationship between positions withheld and the anticipated excessing.

The Union interprets the provisions of Article 12 as requiring a relationship between positions withheld and a general number of anticipated excessed positions. The time frame of such withholding must be consistent with positions identified as excessed to an installation on prepared impact statements provided to the Union.

As we enter this phase of major dislocation of employees due to automation deployment, it is essential that contractual provisions are uniformly applied.

Please respond at your earliest convenience in order that the parties may clarify their agreement or disagreement on these issues.

Sincerely,

William Burrus
Executive Vice President

Sherry A. Cagnoli
Asst. Postmaster General
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

WB:rb

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

OCT 04 1989

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Dear Mr. Burrus:

Enclosed are the Memorandums of Understanding regarding Article 7, Section 3.A, Employee Complements; and Article 12, Principles of Seniority, Posting and Reassignments, for your files.

If you have any questions, please contact me at 268-3811.

Sincerely,

Anthony J. Vegliante
General Manager
Programs and Policies Division
Office of Contract
Administration

Enclosures

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

RE: Article 7, Section 3.A.

The parties will meet at the regional level, as much as 6 months whenever possible, to identify the time period, general number of full-time vacancies, geographic area and craft, which will be withheld/reverted and applied to Article 7, Section 3.A (90/10 provisions).

The Union will be notified, at the regional level, of the exact numbers to be withheld, no less than 90 days prior to the involuntary reassignment of employees.

U.S. Postal Service

American Postal Workers Union, AFL-CIO

9-20-89
(Date)

9-20-89
(Date)

Attachment

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

UNITED STATES POSTAL SERVICE

AND THE

AMERICAN POSTAL WORKERS UNION, AFL-CIO

RE: Article 12

The following provisions are mutually agreed to by the parties so that the primary principle of reassignment, "the dislocation and inconvenience to employees in the regular workforce shall be kept to a minimum, consistent with the needs of the service."

The union, at the regional level, will be given notice when technological and mechanization changes impact the bargaining unit, no less than 90 days, but as much as 6 months whenever possible. This notice shall be in the form of the Manpower Impact Report (copy attached).

Any involuntary reassignments outside the installation will require a local labor management meeting. It is in the interest of both parties to meet as soon as practicable and to develop an ongoing flow of communications to insure that the principle(s) of Article 12 (reassignment) are met.

The first local labor management meeting must be held no later than 90 days prior to the involuntary reassignment of employees.

Anthony J. Vegliante
U.S. Postal Service

9-20-89
(Date)

William Burrus
American Postal Workers Union, AFL-CIO

9-20-89
(Date)

Attachment

LR420:AJVegliante:jda:20260-4127

Impact/Work Hour Report

Regional Managers,
Labor Relations

The enclosed impact/work hour report is to be supplied to the unions, at the regional level, in accordance with the enclosed memorandum. This report takes the place of the automation site impact statement.

Whenever changes occur in the original impact/work hour report, the union, at the regional level, will be provided an updated impact/work hour report. The provisions of the (date) memorandum will apply to the updated impact/work hour report.

Anthony J. Vegliante
General Manager
Programs and Policies Division
Labor Relations Department

Enclosures

IMPACT/WORKHOUR REPORT

A	B	C	D
AFFECTED/ZONE ASSOCIATE OFFICE	CURRENT (WK HRS)	PROPOSED (WK HRS)	DAILY SAVINGS (WK HRS)

* B = CURRENT PRODUCTIVITY RATE (MPLSM OR MANUAL)
* B = 8,000 + ADDITIONAL MLOCR COST AS APPLICABLE

SITE IMPACT REPORT
MANPOWER IMPACT

1. OVERTIME

   a. Current mail overtime rate per accounting period. _____

   b. Current mail processing overtime hours per accounting period: _____

   c. Planned reduction in overtime hours per accounting period: _____

      - in manual operations: _____

   d. Proposed mail processing overtime hours after installation: _____

   e. Proposed overtime rate in mail processing per accounting period after installation of equipment: _____

2. CASUALS

   a. Current number of mail processing casuals on rolls: _____

   b. Average hours worked by mail processing casuals per accounting period: _____

   c. Planned reduction in mail processing hours per accounting period: _____

   d. Number of mail processing casuals impacted by reduced hours _____

      - in manual operations

SITE IMPACT REPORT
MANPOWER

e. Number of mail processing casual positions to be eliminated:

f. Number of mail processing casuals remaining: _____

g. Justify the need for these remaining casuals:

3. PART-TIME FLEXIBLES

a. Current number of mail processing PTF'S on rolls: _____

b. Average hours worked by PTF's per accounting period: _____

c. Planned reduction in PTF hours per accounting period: _____

d. Number of individual mail processing PTF's impacted by reduced hours

- in manual operations: _____

SITE IMPACT REPORT
MANPOWER IMPACT

4. FULL-TIME REGULAR EMPLOYEES

a. How many full-time postions are to be abolished and/or reverted:

- in manual operations: _____

b. Will there be any employee excessing: YES NO (Circle One)

c. Of the employees to be excessed out of their sections, but remain within their installation, how many will be:

- Excessed from manual operations: _____
- Excessed into manual operations: _____
- Excessed into machine operations: _____

d. Will excessing out of the installation be required: YES NO (Circle One)

e. How many positions:

f. List the anticipated post offices and vacancies to which assignment will be made: _____

Facility Assignment

SITE IMPACT REPORT
MANPOWER IMPACT

g. Provide a narrative explaining the need for excessing:

h Provide a narrative of your current and future plan and any adjustments made as a result of deployment.

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

November 3, 1989

MEMORANDUM FOR FIELD DIRECTORS, HUMAN RESOURCES
REGIONAL MANAGERS, LABOR RELATIONS

SUBJECT: Excessing Employees

Recently, it was brought to our attention that field managers and supervisors have been discussing excessing with their employees. While such discussions may have been done with the best of intentions, employees have received erroneous information.

As you know, the U. S. Postal Service and the American Postal Workers Union, AFL-CIO, have recently agreed to a number of issues relating to excessing. Specifically, meetings will be taking place at the regional level addressing automation impact statements and resultant excessings at least 90 days before implementation.

Therefore, it is our position that no field manager or supervisor should discuss any excessing under the provisions of Article 12 of the National Agreement until such time as management and the union at the regional level have concluded their discussions. This will preclude employees from receiving any erroneous information from management or the union as well as control the appropriate flow of information.

Should you have any questions regarding the foregoing, please contact Harvey White of my staff at 268-3831.

Joseph J. Mahon, Jr.
Assistant Postmaster General

cc: Mr. William Burrus

UNITED STATES POSTAL SERVICE
SOUTHERN REGIONAL OFFICE
Memphis, TN 38166

OUR REF: SR422:WMorris:tkh:0420

DATE: JUN 29 1983

SUBJECT: Impact Statement - Content Security

TO: All District Managers

SC Managers/Postmasters
All Automation Sites

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**********
* GET ON THE BOND WAGON *
*    BUY SAVINGS BONDS  *
**********
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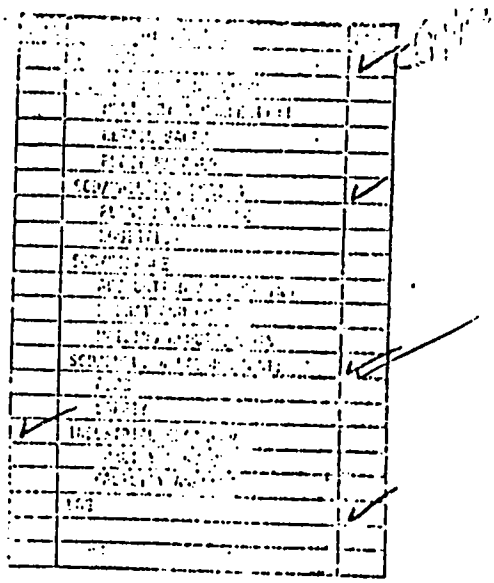
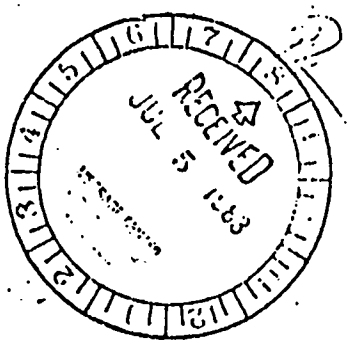
It has come to our attention, that some sites have been approached by their local union requesting a copy of the Impact Statement.

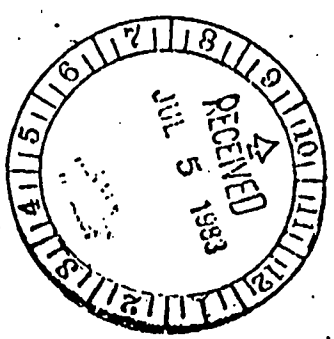
Headquarters, Labor Relations Department, is the only organization authorized to provide Impact Statement information to the unions. Be cautious if you are asked to provide this information at the local level.

Your cooperation in this matter will keep our plans from being misinterpreted.

for W. A. Waldrop
Regional Director
Mail Processing Department







MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND
AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: Implementation of Article 12.3.A Limitations (5 Bids)

The parties agree that all employees represented by the American Postal Workers Union may be designated a successful bidder no more than five (5) times as provided under Article 12.3.A.

The above is effective November 21, 1994, for the life of the next contract.

Anthony J. Vegliante
Manager
Grievance and Arbitration
U.S. Postal Service

Dated: 12/1/94

William Burrus
Vice President
American Postal Workers
Union, AFL-CIO

Dated: 12-1-94

UNITED STATES POSTAL SERVICE
ROOM 9014
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
TEL (202) 268-3816
FAX (202) 268-3074

SHERRY A CAGNOLI
ASSISTANT POSTMASTER GENERAL
LABOR RELATIONS DEPARTMENT

March 8, 1991

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Dear Mr. Burrus:

This letter responds to your correspondence of February 8 and 14 to Joseph Mahon requesting the Postal Service's position regarding the conversion of PTF's under the Memorandum Of Understanding.

Your position is not entirely clear despite your clarifying letter of February 14. Since this issue is one that may have a continuing future impact due to automation, it is important that your position be clearly understood. We believe that a meeting between the parties for the purpose of information sharing and to ensure that we clearly understand the issue as you presented it is necessary.

Please contact Anthony J. Vegliante of my staff at 268-3811 to arrange a meeting.

Sincerely,

Sherry A. Cagnoli

American Postal Workers Union, AFL-CIO
1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

February 14, 1991

Dear Mr. Mahon:

By letter of February 8, 1991, I inquired of the USPS' position on the conversion of PTFs under the Maximization Memorandum. I conveyed the Union's position that such conversions were unaffected by the withholding of vacancies pursuant to Article 12.

This is to clarify that it is the Union's position that such conversions may be withheld (within the number of withheld positions) as identified at the regional level. Employees meeting the maximization criteria and whose conversions would not reduce the number of identified withheld positions are entitled to conversion pursuant to the procedure.

Please respond to the issue as clarified by this letter.

Sincerely,

William Burrus
Executive Vice President

Joseph J. Mahon, Jr.
Asst. Postmaster General
U.S. Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

WB:rb

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

February 8, 1991

William Burrus
Executive Vice President
(202) 842-4246

Dear Mr. Mahon:

I am advised that local offices are refusing to convert part-time employees to full-time status as per the Maximization Memorandum of Understanding. The reason given is that "positions" are being withheld pursuant to Article 12.

Employees converted to full-time pursuant to the Memorandum do not occupy full-time positions as defined in Article 12. The withholding of vacancies is intended to accommodate excessed employees by placement in residual vacancies vacated by full-time regular employees. The parties have agreed by separate Memorandum that withheld vacancies must be identified. In that employees converted under the Memorandum are only assigned to duties, hours and days of work, withholding will not accommodate excessed full-time employees.

It is the position of the American Postal Workers Union that PTFs who meet the requirements of the Memorandum must be converted to full-time notwithstanding the withholding of full-time positions pursuant to Article 12.

Please respond as to the employer's position on this issue.

Sincerely,

William Burrus
Executive Vice President

Joseph J. Mahon, Jr.
Asst. Postmaster General
U.S. Postal Service
475 L'Enfant Plaza SW
Washington, DC 20260-4100

WB:rb

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND
AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: Conversions under the Maximization Memorandum

As discussed, when a full-time assignment(s) is being withheld in accordance with Article 12, the subsequent backfilling of the assignment(s) will not count towards the time considered for maximizing full-time duty assignments, in accordance with the Memorandum of Understanding.

The parties also recognize that employees are to be converted to full-time consistent with the memorandum, provided the work being performed to meet maximization qualification is not being performed on assignments(s) described above.

Sherry A. Cagnoli 8/19/92
Sherry A. Cagnoli
Assistant Postmaster General
Labor Relations Department
U.S. Postal Service

William Burrus
Executive Vice President
American Postal Workers
Workers Union, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

July 2, 1982

Mr. John A. Morgen
President, Clerk Craft
American Postal Workers
Union, AFL-CIO
817 14th Street, N. W.
Washington, D. C. 20005

Dear Mr. Morgen:

This is in regard to your request for certain clerk craft data. For quick reference, I have briefly restated that which you requested. Such information is as of mid-March, 1982.

1. Total number of clerical employees - 264,108

2. Total number of level 4 clerical employees - 4,659

3. Total number of level 5 clerical employee - 192,707

4. Total number of level 6 clerical employees - 56,996

5. Total number of clerical employees holding level 6 "best qualified" positions - 7,554

Please contact me should you have any questions regarding the foregoing.

Sincerely,

Bruce D. Evans

Bruce D. Evans
Labor Relations Executive
Labor Relations Department

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

UNITED STATED POSTAL SERVICE

AND THE

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: Retreat Rights - Article 12.5.C.4

The parties mutually agree that the following bidding procedures will apply when clerk craft employees of different levels comprise a section and excessed employee have expressed a desire to retreat back to their former section.

1. The initial vacancies occurring within a Section in the same salary level from which excessed employees have active retreat rights, when posted are limited to employees within the section of the same salary level as the excessed employees.

2. The residual vacancy that occurs from one above is then offered to employees who have retreat rights to the section and who, at the time of excessing, were in the same salary level as the residual vacancy when excessed.

3. If vacancies remain after the offering of retreat rights to eligible employees, these vacancies are posted for bid.

4. Vacancies that occur within the section that are not of the same salary level of the excessed employee with retreat rights are posted for bid.

Mr. Anthony J. Vegliante
Manager, Grievance and Arbitration
Labor Relations

Mr. William Burrus
Executive Vice President
American Postal Workers Union

Date 5/27/94

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

UNITED STATES POSTAL SERVICE

AND THE

AMERICAN POSTAL WORKERS UNION, AFL-CIO

RE: Article 12

The following provisions are mutually agreed to by the parties so that the primary principle of reassignment, the dislocation and inconvenience to employees in the regular workforce shall be kept to a minimum, consistent with the needs of the service.

The union, at the regional level, will be given notice when technological and mechanization changes impact the bargaining unit, no less than 90 days, but as much as 6 months whenever possible. This notice shall be in the form of the Manpower Impact Report (copy attached).

Any involuntary reassignments outside the installation will require a local labor management meeting. It is in the interest of both parties to meet as soon as practicable and to develop an ongoing flow of communications to insure that the principle(s) of Article 12 (reassignment) are met.

The first local labor management meeting must be held no later than 90 days prior to the involuntary reassignment of employees.

U.S. Postal Service

E-20-89
(Date)

American Postal Workers Union, AFL-CIO

E-20-89
(Date)

Attachment

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE

AND

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: Cross Craft Reassignments

In instances where employees represented by the APWU will be involuntarily reassigned outside the installation, employees may be reassigned to other APWU crafts outside the installation. Such employees who meet the minimum qualifications will be afforded their option of available vacancies by seniority.

This memorandum does not affect any other rights that Motor Vehicle Craft employees may possess under the provisions of Article 12.

Sherry A. Cagnoli
Assistant Postmaster General
Labor Relations Department

Date: 8/14/92

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

Date: 8/5/92

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND
AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: Conversions under the Maximization Memorandum

As discussed, when a full-time assignment(s) is being withheld in accordance with Article 12, the subsequent backfilling of the assignment(s) will not count towards the time considered for maximizing full-time duty assignments, in accordance with the Memorandum of Understanding.

The parties also recognize that employees are to be converted to full-time consistent with the memorandum, provided the work being performed to meet maximization qualification is not being performed on assignments(s) described above.

Sherry A. Cagnoli 8/19/92
Sherry A. Cagnoli
Assistant Postmaster General
Labor Relations Department
U.S. Postal Service

William Burrus
William Burrus
Executive Vice President
American Postal Workers
Workers Union, AFL-CIO

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

RE: Article 7, Section 3.A.

The parties will meet at the regional level, as much as 6 months whenever possible, to identify the time period, general number of full-time vacancies, geographic area and craft, which will be withheld/reverted and applied to Article 7, Section 3.A (90/10 provisions).

The Union will be notified, at the regional level, of the exact numbers to be withheld, no less than 90 days prior to the involuntary reassignment of employees.

U.S. Postal Service

American Postal Workers Union, AFL-CIO

9-20-89
(Date)

9-20-89
(Date)

Attachment

MEMORANDUM OF UNDERSTANDING BETWEEN
THE UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

The parties mutually agree that the following provisions apply when clerk craft employee excessing is impacted by technological or mechanization changes and employees are placed in assignments requiring the entrance exams of ON-400, ON-440 and ON-450.

(1) Excessed employees who have not passed the required entrance exam may request, in writing, placement in a lower level residual vacancy within or outside the installation in lieu of placement in vacancies in the same or another craft. The seniority of such employees after reassignment shall be established pursuant to Article 37, Section 2.

This option to waive the required exam and begin the accrual of seniority in the lower level position shall be available only at the time the employee is excessed and exercises a choice of assignment. Subsequent waivers may be made only through the application for vacancies as provided in paragraph 3.

2) Excessed employees who do not request placement in a lower level and for whom no vacancies exist within or outside the craft in the same level within a 35-mile radius may be involuntarily assigned to the duties of a lower level vacancy. If no vacancies exist within a 35-mile radius, the Employer will meet with the Union at the regional level to identify vacancies beyond the 35-mile radius. (The parties agree that the 35-mile radius specified above is agreed to for purposes of this Memorandum and has no bearing on the parties' positions in other circumstances.)

(a) While assigned to the duties of a position for which the employee is not qualified on the entrance exam, such employees may submit application for residual vacancies in the lower level position to which they have been assigned. Their applications will be considered by seniority for residual vacancies that are unbidded.

(b) While assigned to the duties of a lower level position, employees who fail to bid or apply for all vacancies in their wage level in the installation to which assigned will void their rate protection, and they will assume the salary level of the duties to which they have been assigned. Such reassigned employees' seniority for bidding will be established pursuant to the craft provisions.

(c) Those who bid for positions in their wage level, but who are unsuccessful will be considered unassigned regulars and may be placed in residual vacancies within their wage level to positions for which they meet the minimal qualifications (Article 37, Section 3.F.10).

(3) Employees involuntarily placed in a vacant assignment, exercising a choice of vacancies or successful applicants to vacant positions, shall retain retreat rights to vacancies for which they are eligible. After exercising retreat rights, their seniority shall be established as though their service has been continuous in the position to which they retreated.

(4) Employees excessed pursuant to the utilization of automation under 1, 2 or 3 above shall maintain rate protection under the provisions of Article 4.

(5) Employees who have been identified as excessed and who are provided choices of existing vacancies shall be covered by the provisions of 1 through 4 and shall be treated as having been involuntarily excessed.

The parties mutually agree that the provisions of this agreement are not representative of their positions on other issues and may not use this document to further their arguments on other issues. The parties recognize the need to incorporate the principles above in the collective bargaining agreement and will address these issues in the 1990 negotiations. Subsequently, this agreement will expire on November 20, 1990, unless mutually extended by the parties.

Joseph J. Mahon, Jr.
Assistant Postmaster General
Labor Relations Department
U.S. Postal Service

5-31-90
(Date)

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

6-1-90
(Date)

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

UNITED STATED POSTAL SERVICE

AND THE

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: Retreat Rights - Article 12.5.C.4

The parties mutually agree that the following bidding procedures will apply when clerk craft employees of different levels comprise a section and excessed employee have expressed a desire to retreat back to their former section.

1. The initial vacancies occurring within a Section in the same salary level from which excessed employees have active retreat rights, when posted are limited to employees within the section of the same salary level as the excessed employees.

2. The residual vacancy that occurs from one above is then offered to employees who have retreat rights to the section and who, at the time of excessing, were in the same salary level as the residual vacancy when excessed.

3. If vacancies remain after the offering of retreat rights to eligible employees, these vacancies are posted for bid.

4. Vacancies that occur within the section that are not of the same salary level of the excessed employee with retreat rights are posted for bid.

Mr. Anthony J. Vegliante
Manager, Grievance and Arbitration
Labor Relations

Mr. William Burrus
Executive Vice President
American Postal Workers Union

LABOR RELATIONS

UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4000

August 17, 1993

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 2000-4128

Dear Bill:

This letter is in response to your July 19 correspondence concerning the appropriate labor agreement provision governing the excessing of employees from a craft.

Article 12, Section 5.C.4. addresses reassignment within an installation for employees excess to the needs of a section. This Section of the contract does not contain a provision for excessing employees from a craft.

Cross craft reassignments instead are discussed in Article 12, Section 5.C.5.

Sincerely,

Anthony J. Vegliante
Manager
Grievance and Arbitration

UNITED STATES POSTAL SERVICE
475 L ENFANT PLAZA SW
WASHINGTON DC 20260

November 5, 1992

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This letter is in reference to your correspondence regarding superseniority of stewards following excessing.

As we agreed, following excessing, stewards maintain their superseniority for the purposes of bidding on initial vacancies over excessed employees wishing to exercise their retreat rights.

If there are any questions regarding the foregoing, please contact Dan Magazu of my staff at (202) 268-3804.

Sincerely,

Anthony J. Vegliante
General Manager
Programs and Policies Division
Office of Contract Administration
Labor Relations

Mr. William Burrus
Vice President
American Postal Workers Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

RE: H1C-NA-C 117
M. BILLER
WASHINGTON DC 20005-4128

Dear Mr. Burrus:

Recently, you met with me in prearbitration discussions to discuss the above captioned grievance, currently pending national arbitration.

During those discussions the parties mutually agreed that when excessing is required from a Section (or Sections) as identified in a Local Memorandum of Understanding, any reduction (excessing/abolishment/reversion) in the number of Full-Time Regular employees within the Section (or Sections) shall be from among Full-Time Flexible employees in the same salary level in that section, until they are exhausted and prior to the abolishment or reversion of Full-Time Regular Employees (duty assignments). Full-Time Flexible employees are those who were converted to Full-Time pursuant to the Maximization MOU dated July 21, 1981.

When excessing is required from a Craft or Installation, any reduction in the number of full-time assignments within the Craft or Installation shall be from among Full-Time Flexible assignments in the same wage level, until they are exhausted. Excessing will be accomplished by seniority.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle this case and remove it from the national arbitration listing.

Sincerely,

Rodney J. Lambson
Labor Relations Specialist
Grievance and Arbitration

William Burrus
Vice President
American Postal Workers Union, AFL-CIO

Date: 3-26-99

120

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

UNITED STATED POSTAL SERVICE

AND THE

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: Retreat Rights - Article 12.5.C.4

The parties mutually agree that the following bidding procedures will apply when clerk craft employees of different levels comprise a section and excessed employee have expressed a desire to retreat back to their former section.

1. The initial vacancies occurring within a Section in the same salary level from which excessed employees have active retreat rights, when posted are limited to employees within the section of the same salary level as the excessed employees.

2. The residual vacancy that occurs from one above is then offered to employees who have retreat rights to the section and who, at the time of excessing, were in the same salary level as the residual vacancy when excessed.

3. If vacancies remain after the offering of retreat rights to eligible employees, these vacancies are posted for bid.

4. Vacancies that occur within the section that are not of the same salary level of the excessed employee with retreat rights are posted for bid.

Mr. Anthony J. Vegliante
Manager, Grievance and Arbitration
Labor Relations

Mr. William Burrus
Executive Vice President
American Postal Workers Union

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE

AND

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: Article 12.5.C.5.b(6)

. . . In the Clerk Craft, an employee(s) involuntarily reassigned shall be entitled at the time of such reassignment to file a written request to return to the first vacancy {in the same or lower salary level} in the craft and installation from which reassigned. Such request for retreat rights must indicate whether the employee(s) desires to retreat to the same, lower, and/or higher salary level assignment and, if so, what salary level(s). The employee(s) shall have the right to bid for vacancies within the former installation and the written request for retreat rights shall serve as a bid for all vacancies in the level from which the employee was reassigned and for all residual vacancies in other levels for which the employee has expressed a desire to retreat. The employee(s) may retreat to only those {lower level} assignments for which the employee(s) would have been eligible to bid. If vacancies are available in the specified lower, higher or same salary level {and in the salary level}, the employee will be given the option.

Repostings occurring pursuant to Article 37, Sections 3.A.3, 3.A.4, and 3.A.5, are specifically excluded from the application of this subsection.

Withdrawal of a bid or failure to qualify for a vacancy or residual vacancy terminates retreat rights to the level of the vacancy. Furthermore, employees(s) electing to retreat to a lower level are not entitled to salary protection.

Sherry A. Cagnoli
Assistant Postmaster General
Labor Relations Department

Date: 8/19/92

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

Date: 8/14/92

ARTICLE 12.5.C.5.b(6)

This Memorandum totally changes the procedures for employees to retreat when excessed from their craft and installation. Former provisions provide that employees excessed across craft lines must be returned, regardless of seniority standing relative to other excessed employees; that excessed employees may retreat only to residual vacancies in the same or higher level and that employees may only retreat to residual vacancies permitting interlevel bidding of all employees in the former craft/installation (senior and junior) to bid before establishment of a residual vacancy to which the employee can retreat.

The new procedure provides that the excessed employee will indicate on the established local form vacancies to which he/she wishes to retreat (same, higher, lower). The submitted form will serve as a bid for all initial vacancies in the level from which excessed and to all residual vacancies in higher or lower level vacancies. This form will be completed by the employee without knowing the hours, days or skills required of the future vacancies and the bidding process of Article 37 will govern the senior bidder and the withdrawal procedures. Unless the employee has access to the bidding sheet in the former office he/she will be unaware of the position for which he/she is bidding. The intent is to return the employee to the former craft or installation and not to a specific assignment with hours or days. An employee who does not wish to take a chance on obtaining an assignment that he/she will not want can either decide not to note on the form the desire to return to a specific level and accept any position in the level selected or obtain a copy of the posting and withdraw from any bid that is not desirable. Withdrawal from bidding to a vacancy terminates retreat rights to future vacancies in that level. The employee would continue to bid to vacancies in other levels noted on the retreat form.

The bid to vacancies in the former level ensures that junior employees in other levels who have the right to bid under the interlevel bidding agreement cannot outbid the excessed employee as they could previously do under former rules. The excessed employee's bid is being considered for the initial vacancy concurrently with employees in the former office.

A bid to "residual" vacancies in higher or lower level positions occurs after employees in the former office have completed bidding and there is a no bid position. All clerk employees, higher and lower level, bid under the interlevel bidding agreement until there is a no bid position.

Employees assigned across craft lines will now be returned to the craft and/or installation in seniority order with other excessed employees who remained in the same craft. Previously, the contract provided that no matter the seniority of the employee assigned across craft lines, such employee was returned to the first vacancy and it was always unclear whether an employee assigned across craft lines within the installation and across craft lines outside the installation, which was to be returned first. Now they will all be returned based on their seniority standing. The only exception being that an employee across craft lines may not withdraw from a posting in the same, lower or higher level as the contract provides that he/she must be returned.

FEB 13 1988

LR420:HWhite:ew:20260-4127

National Grievance H7C-NA-C 12

Mr. William J. Henderson
Field Division General Manager/Postmaster
Greensboro Division, U.S. Postal Service
900 East Market Street
Greensboro, NC 27420-1201

Attention: Mr. Gordon Jacobs
Field Director, Human Resources

This is in regard to our recent discussions of national grievance H7C-NA-C 12.

It is agreed that Mr. William E. Campbell will be permitted to exercise his retreat rights to the first available vacancy after receipt of this letter. The rights will be granted to those positions for which Mr. Campbell would have been otherwise eligible to bid.

This granting of retreat rights is to be considered both noncitable and without prejudice to both management and the union position regarding the interpretations of Article 12 of the National Agreement.

Should there be any questions, please contact Harvey White at PEN 268-3831.

(signed)

Stephen W. Furgeson, General Manager
Grievance and Arbitration Division
Office of Contract Administrtion
Labor Relations Department

NOTE: Employees similarly situated in the Greensboro Division should be prospectively subject to these terms on a noncitable, without prejudice basis.

bcc: Mr. William Burrus, APWU

120A

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Douglas C. Holbrook
Secretary-Treasurer
(202) 842-4215

December 18, 1987

Dear Mr. Fritsch:

Pursuant to provisions of Article 15 of the 1987 National Agreement the American Postal Workers Union submits to step 4 a dispute between the parties over the interpretation of eligibility for retreat rights. The Union disagrees with the employers position as explained in correspondene of December15, 1987 which applies retreat rights solely to "employees who would have been otherwise eligible to bid."

The language referenced by the employer is implied only as it relates to employees excessed to the needs of a section. The language provides that "failure to bid for the first available vacancy will end such retreat right."

Reassignments to other installations after making reasignments within the installation provides that reassigned employees "shall be entitled at the time of such reassignment to file a written request to be returned to the first vacancy in the level in the craft or occupational group in the installation from which assigned."

Reduction in the number of employees in an installation other than by attrition provides "the employee shall be returned at the first opportunity to the craft from which assigned."

These provisions place no restrictions on the right of an employee to return to their former facility of craft other than those specifically stated.

The Union therefore disagrees with the Employer's interpretation as it relates to excessing from a craft or facility.

Please contact my office to arrange discussion of the grievance.

Sincerely,

William Burrus
Executive Vice President

Thomas A. Fritsch
Assistant Postmaster General
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

WB;rb

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

December 15, 1987

Mr. William Burrus
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

Dear Mr. Burrus:

This is in response to your letter of November 23 regarding retreat rights under the provisions of Article 12 of the National Agreement.

Employees who are involuntarily reassigned and are given an advance notice of not less than 60 days receive retreat rights. Any craft employee who voluntarily accepts reassignment to another craft or occupational group, another branch of the Postal Service, or another installation loses retreat rights.

The language throughout Article 12 clearly establishes that involuntarily reassigned employees, who would have been otherwise eligible to bid, are those employees who maintain entitlement to retreat rights.

The enclosed notice submitted for review is to an employee who volunteered to change his craft subsequent to reassignment and is therefore not entitled to retreat rights, since he would not otherwise be eligible to bid.

Should you have any further questions regarding the foregoing, please contact Harvey White at 268-3831.

Sincerely,

Thomas J. Fritsch
Assistant Postmaster General

Enclosure

120C

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

November 23, 1987

Dear Mr. Fritsch:

I am in receipt of the enclosed notice interpreting exceptions to contractual language providing retreat rights for excessed employees. Provisions of Article 12 of the National Agreement are specific in defining retreat rights and the exhaustion of same. At Article 12, Section 5C4c, the contract provides "Failure to bid for the first available vacancy will end such retreat rights."

Normal contract contruction limits application to those provisions specifically agreed to unless the language is broadly worded. By agreeing to specific conditions for the exhaustion of retreat rights the parties apparently intented to limit such application.

This is to inquire as to whether the Postal Service interprets the provisions of Article 12 to include the exceptions listed in the enclosed notice.

Sincerely,

William Burrus
Executive Vice President

Thomas Fritsch
Assistant Postmaster General
U.S. Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

WB:rb

Enclosure

JOSEPH J. MAHON JR.
VICE PRESIDENT, LABOR RELATIONS

UNITED STATES POSTAL SERVICE

1/26/96

January 23, 1996

VICE PRESIDENTS, AREA OPERATIONS

SUBJECT: RIF Procedures

In light of recent Merit Systems Protection Board (MSPB) decisions, there has been some confusion over the process to be implemented in reassigning bargaining unit employees.

The MSPB has issued decisions regarding placement of veterans preference bargaining unit employees in lower level positions. Placing veterans preference bargaining unit employees in lower level positions, even with saved grade, has been determined to be a reduction in force (RIF). The MSPB has decided that the Postal Service must follow RIF procedures when placing veterans preference bargaining unit employees in lower level positions.

Historically, the Postal Service has utilized Article 12 of the Collective Bargaining Agreements (CBA) in placing employees in lower level positions and will continue to do so when appropriate and not in conflict with RIF procedures. The provisions contained in Article 12 regarding placement of employees are based on the employee's seniority, and do not recognize veterans preference. This could potentially conflict with the RIF procedures contained in federal statute. We should continue to use Article 12 reassignment procedures unless it is apparent that a veterans preference eligible will be adversely affected (placed in a lower grade), at which time Article 6 provisions will be utilized.

The provisions of Article 6 of the CBAs provide a procedure by which bargaining unit employees can be placed in lower level duty assignments which comply with RIF procedures. My department has developed training and guidelines for the placement of veterans preference bargaining unit employees under the provisions contained within Article 6. Training will be completed shortly for all areas concerning the applicable contractual procedures to be utilized to reassign employees under Article 6.

The Headquarters/Field Labor Relations Group is available to work with your area staff to develop a site specific plan to accomplish the necessary placement of affected employees.

Joseph J. Mahon, Jr.

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
202-268-3619
FAX 202-268-3074

SENIORITY FOR EXCESSING PURPOSES

This Memorandum represents a language change to the recently negotiated interlevel bidding agreement Section 3 A 11 c which read:

"For the purposes of Article 12.5.C.4. employees moving from or to a level 4 positions will begin a new period of seniority. If such employees remain in those assignments for three (3) years, those employees will have their seniority restored."

The new language provides that the 3 year restriction only applies if there is excessing to their former wage level. In all other excessing circumstances the employees will apply their full seniority.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE

AND

AMERICAN POSTAL WORKERS UNION, AFL-CIO

RE: Seniority for Excessing Purposes

The parties agree to the following modifications to the present Article 37 language. The modified language will be incorporated into the 1990 National Agreement.

Underlined language is new language. Bracketed language has been deleted.

Article 37.3.A.11.c

c. Employees ranked below level 5 who are promoted as a result of this section and are subsequently impacted due to technological and mechanization changes shall not be entitled to saved grade for a period of two (2) years beginning with the effective date of promotion. This two-year restriction does not apply to employees who previously occupied the higher level. [For the purposes of Article 12.5.C.4, employees moving from or to level 4 positions will begin a new period of seniority. If such employees remain in those assignments for three (3) years, those employees will have their seniority restored.] Before excessing pursuant to provisions of Article 12, employees serving their initial assignment per part a. or b. above may be excessed to their former wage level by inverse seniority provided the employee has not completed three (3) years in the new level.

Sherry A. Cagnoli 8/19/92
Sherry A. Cagnoli
Assistant Postmaster General
Labor Relations Department
U. S. Postal Service

William Burrus
William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

UNITED STATES POSTAL SERVICE
ROOM 9014
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
TEL (202) 268-3818
FAX (202) 268-3074

SHERRY A. CAGNOLI
ASSISTANT POSTMASTER GENERAL
LABOR RELATIONS DEPARTMENT

FEB 10 1992

MEMORANDUM FOR MR. DONNELLY

SUBJECT: Excessing of Rehabilitated Employees (LDC 69)

This memorandum is in response to your November 13 letter concerning whether Article 12 of the National Agreement or the provisions of Section 546.141 of the Employee and Labor Relations Manual (ELM) govern the excessing of rehabilitated (LDC 69) employees.

When excessing occurs in a craft, either within the installation or to another installation, the criteria for selecting the employees to be excessed is by level and craft 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. The subsequent placement of the LDC 69 employee is governed by Article 12 of the National Agreement.

Under Section 546.141(a)(4) of the ELM, the Postal Service could offer the employee a limited duty job at another facility that is "as near as possible to the regular work facility to which the employee is normally assigned." Doing so should keep us in compliance with the Federal Employees Compensation Act as set forth in the ELM.

The Department of Labor (DOL) will issue new regulations addressing the issue of whether an employee has the right to refuse a reassignment offer pending a DOL suitability determination. Although we have expressed an opinion on how the DOL should resolve this issue, it is possible that the DOL will reach a different result. Once the DOL issues its decision, it will be promulgated by the Office of Injury Compensation.

If there are any questions concerning this matter, please contact Stan Urban of my staff at PEN 202-268-3823.

Sherry A. Cagnoli

cc: Joseph J. Mahon, Jr.

~~153~~
151

UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260

November 5, 1992

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This letter is in reference to your correspondence regarding superseniority of stewards following excessing.

As we agreed, following excessing, stewards maintain their superseniority for the purposes of bidding on initial vacancies over excessed employees wishing to exercise their retreat rights.

If there are any questions regarding the foregoing, please contact Dan Magazu of my staff at (202) 268-3804.

Sincerely,

Anthony J. Vegliante
General Manager
Programs and Policies Division
Office of Contract Administration
Labor Relations

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

The United States Postal Service and the American Postal Workers Union, AFL-CIO (Parties), mutually agree that Arbitrator Carlton Snow's award in Case Number H7N-4Q-C 10845 shall be applied in a prospective fashion effective with the date of the award.

Accordingly, employees who are excessed into APWU represented crafts (Clerk, Maintenance, Motor Vehicle, and Special Delivery Messenger) after December 19, 1991, under the provisions of Article 12.5.C.5, shall begin a new period of seniority.

This Memorandum is without precedent or prejudice to the position of either party concerning the issue of prospective or retroactive application of arbitration awards.

Stephen W. Furgeson
General Manager
Grievance and Arbitration Division

Date April 1, 1992

Moe Biller
President
American Postal Workers Union, AFL-CIO

Date April 16, 1992

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

March 4, 1998

Dear Sam:

The enclosed has been received from the Las Vegas local inquiring as to the appropriate information to be considered for employees seeking transfers. Item "D" on page 2 includes the question "Has the employee filed any grievances?". The union believes the question to be inappropriate in that the parties agreement limits the factors to be considered to "acceptable work, attendance, and safety record". The consideration of whether or not an employee has filed grievances is beyond the scope of the parties agreement and thus inappropriate.

I request that your office review this questionnaire and advise my office of your findings.

Thank you for your attention to this matter.

Sincerely,

William Burrus
Executive Vice President

Sam Pulcrano, Manager
Contract Administration APWU/NPMHU
Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

UNITED STATES
POSTAL SERVICE

April 1, 1998

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Dear Bill:

This responds to your letter of March 4 concerning a local form, "Transfer/Reassignment Evaluation Questionnaire," used by some supervisors to provide an evaluation of an employee requesting a transfer or reassignment.

The particular question on the form that you find inappropriate is the question which asks about an employee's history of filing grievances. We agree that question "I.D. Has employee filed any grievances?" is inappropriate. The local office has been directed, through the area office, to delete that question from the form.

If you have any questions regarding the foregoing, please contact Joyce Ong of my at (202) 268-6248.

Sincerely,

Samuel M. Pulcrano
Manager
Contract Administration (APWU/NPMHU)

475 L'Enfant Plaza SW
Washington DC 20260-4100

MEMORANDUM OF INTENT
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
AMERICAN POSTAL WORKERS UNION, AFL-CIO

RE: MODIFICATION TO EXISTING TRANSFER RULES SPECIFICALLY FOR IMPLEMENTATION OF MOU SIGNED FEBRUARY 2, 1993

Reference Section 1.B.(3). of the Memorandum of Understanding signed February 2, 1993 and the 1990-1994 Collective Bargaining Agreement, Article 12, Section 6. Transfers.

With these provisions in mind, following are modified transfer rules in connection with the MOU signed between the parties.

TRANSFERS TO FULL-TIME REGULAR POSITIONS BY FULL-TIME REGULAR OR PART TIME REGULAR EMPLOYEES THROUGH THE APWU REGIONAL COORDINATOR:

FULL-TIME REGULAR OR PART-TIME REGULAR CLERK CRAFT EMPLOYEES TRANSFERRING TO FULL-TIME VACANT POSITIONS -- IN LIEU OF PTFs FOR CONVERSION TO FTR

A. Management will identify full-time vacant positions (residual duty assignments or unencumbered) and provide a list of those positions to the APWU Regional Coordinator. The APWU Regional Coordinator may identify full-time regular or part-time regular clerks for transfer to these positions and installation heads are required to accept them with the following exceptions:

Management may deny transfer if:

1. the employee has a live disciplinary record as defined in Article 16, Section 10, and/or,
2. the employee is on light or limited duty.

B. Transfers of full-time regular or part time regular career clerk craft employees to and from offices of any size office through this process will be counted towards the obligation of the employer to offer opportunities to convert PTF employees to FT in offices of less than 100 career clerk craft employees.

C. Transfers will be contingent on the employee possessing the minimum qualifications for the position as established in the MOU on Page 308 of the national agreement.

D. These modifications to the transfer rules will be for the Clerk Craft only and be in effect until the obligations are complete under the Memorandum of Understanding signed February 2, 1993.

E. Other than the Clerk Craft, transfer requests are subject to the existing provisions of the contract.

TRANSFERS TO PART TIME CAREER POSITIONS THROUGH THE APWU REGIONAL COORDINATOR:

FULL-TIME REGULAR OR PART-TIME CLERK CRAFT EMPLOYEES TRANSFERRING TO PART-TIME FLEXIBLE POSITIONS

A. Prior to hiring PTFs/PTRs, management may provide a list of part-time flexible career positions to be filled to the APWU Regional Coordinator. The APWU Regional Coordinator will identify full-time regular, part-time flexible or part-time regular clerks for transfer to these positions and installation heads are required to accept them with the following exceptions:

Management may deny transfer if:

1. the employee has a live disciplinary record as defined in Article 16, Section 10, and/or,
2. the employee is on light or limited duty.

B. Transfers will be contingent on the employee possessing the minimum qualifications for the position as established in the MOU on Page 308 of the national agreement.

C. These modifications to the transfer rules will be for the Clerk Craft only and be in effect until the obligations are complete under the Memorandum of Understanding signed February 2, 1993.

D. Other than the Clerk Craft, transfer requests are subject to the existing provisions of the contract.

E. If the APWU Regional Coordinator is not provided with a PTF position to be filled and the Postal Service fills the need through hiring, any subsequent conversion of the PTF to full-time by the employer does not count towards the obligation of the employer under the MOU to offer conversion opportunities for PTFs in less than 100 career clerk craft employees.

If the APWU Regional Coordinator is provided with a PTF position to be filled and supplies an employee who is accepted for the transfer, any subsequent conversion of the PTF to full-time counts toward the obligation of the employer under the MOU to offer conversion opportunities for PTFs in less than 100 career clerk craft employees.

If the APWU Regional Coordinator is provided with a PTF position to be filled and is unable to provide a PTF/PTR/FTR transfer, the Postal Service may proceed to fill the need through hiring. A subsequent conversion of the PTF to full-time will count towards the obligation of the

employer under the MOU to offer conversion opportunities for PTFs in less than 100 career clerk craft employees.

William Burrus

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

Date: 4-6-93

William J. Downes

Mr. William J. Downes
Manager
Contract Administration
APWU/NPMHU

Date: 4-2-93

MEMORANDUM OF INTENT
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
AMERICAN POSTAL WORKERS UNION, AFL-CIO

RE: REVIEW OF WITHHELD POSITIONS

1. All vacancies currently withheld under Article 12 are in the process of being reviewed by management. Upon completion, the results of the review will be shared with the appropriate APWU Regional Coordinator. If the review determines that the number of withheld positions needed has changed, a new or updated impact statement(s) will be provided to the union reflecting the most recent projections.

2. If the review results in a reduction in the number of withheld positions, then the local parties will meet to determine which method(s) will be used for filling any vacant assignments previously withheld. The method(s) used for filling such vacancies will be applied in the order outlined as follows:

1. The assignment of an unencumbered full-time employee;

2. The conversion of a part-time flexible (PTF) within the installation;

3. Transfer of an eligible career clerk craft employee through the APWU Regional Coordinator in accordance with the PTF conversion MOU signed February 2, 1993.

3. Withheld positions identified to accommodate previously notified excessed employees who have been provided letters of excessing or are in the process of being notified, and who will, at the time of the review, definitely be excessed, shall not be subject to the review of #1 above.

4. This review of withheld positions is a one time only review and is for the exclusive purpose of the application of the MOU signed February 2, 1993, between the APWU and U.S. Postal Service.

William Burrus
William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
Date: 4-6-93

William J. Downes
William J. Downes
Manager
Contract Administration
APWU/NPMHU
Date: 4-2-93

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

October 14, 1983

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
817 14th Street, NW
Washington, D.C. 20005-3399

Re: M. Biller
Washington, D.C.
H1C-NA-C-74

Dear Mr. Burrus:

On October 5, 1983, we met to discuss the above-captioned national level grievance.

The American Postal Workers Union has maintained that the U. S. Postal Service is returning injured employees to duty under the OWCP Rehabilitation Program but, in doing so, is not complying with provisions of Section 341.1 of the Personnel Operations Handbook (P-11) which require that such assignments must be made ". . . in accordance with any collective bargaining agreement." In submitting this issue as an interpretive dispute at Step 4 of the grievance procedure, the union further maintained that Article 30 of the 1981 National Agreement permits locals to negotiate a number of items. The items specifically referenced in this instance are set forth in Article 30 as items numbered 15, 16 and 17, all of which pertain to light duty assignments.

During our discussion, you indicated that the union's purpose in submitting this matter to Step 4 was to raise the following question: Are limited duty employees covered by the collective bargaining agreement? As I indicated during our discussion, the answer to that question is set forth in Section 546 of the Employee and Labor Relations Manual (ELM). Specifically, 546.2 provides as follows:

> Reemployment under this section will be in compliance with applicable collective bargaining agreements. Individuals so reemployed will receive all appropriate rights and protection under the applicable collective bargaining agreement.

In view of the foregoing, I do not believe that our respective organizations have a dispute over this issue. Where reemployment occurs under the circumstances described in Section 546, such reemployment must be in keeping with the provisions of any applicable collective bargaining agreements.

Sincerely,

George S. McDougald

George S. McDougald
General Manager
Grievance Division
Labor Relations Department

American Postal Workers Union, AFL-CIO
817 Fourteenth Street N.W. Washington D.C. 20005 • (202) 842-4250

8A

BILLER
President

July 8, 1983

James C. Gildea
Assistant Postmaster General
Labor Relations Department
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

HC-NAT-C-74

Dear Mr. Gildea:

In accordance with the OWCP Rehabilitation Program the Postal Service is returning injured employees to positions within the Postal Service. Article 30 of the Collective Bargaining Agreement permits locals to negotiate the following items:

> The number of light duty assignments within each craft or occupation group to be reserved for temporary or permanent light duty assignments.
>
> 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.
>
> The identification of assignments that are to be considered light duty within each craft represented in the office.

The Postal Service, as a matter of policy, does not abide by these provisions as negotiated at the local level, even though Subchapter 341.1 of the Personnel Operations Handbook (P11) requires that such assignments "be in accordance with any collective bargaining agreement."

In accordance with Article 15, Section 3 of the National Agreement the union submits this issue as an interpretive dispute at Step 4 of the grievance procedure.

The precise issue to be decided is whether or not Article 30 of the 1981 National Agreement and Part 341 and 341.1 of the P11 Handbook require the assignment of limited duty employees to be in accordance with the collective bargaining agreement.

Please contact Executive Vice President William Burrus for discussion of this issue.

Sincerely,

Moe Biller
President

MB:WB:mc
opeiu #2
afl-cio

American Postal Workers Union, AFL-CIO
1300 L Street, NW, Washington, DC 20005

March 15, 1988

William Burrus
Executive Vice President
(202) 842-4246

Dear Mr. Mahon:

The Equal Employment Opportunity Commission has ruled in Case No. 101-84-X-0020 (Agency No. 5-1-0691-3) that partially handicapped employees returning to duty are entitled to placement in the step and level they would have obtained, but for the on-the-job injury.

This communication is to inquire as to the Postal Service's intent to amend its regulations on this subject to conform with the Decision and to adjust the pay of similarly situated employees who have not presently reached the top step and are being compensated at a salary below that which is required by law.

Please advise as to the intent of the Postal Service.

Sincerely,

William Burrus
Executive Vice President

Joseph Mahon
Asst. Postmaster General
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

WB:rb

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

Time limits were extended by mutual consent.

Sincerely,

Arthur S. Wilkinson
Grievance & Arbitration
Division

Lawrence G. Hutchins
Vice President
National Association of
Letter Carriers, AFL-CIO

The final decision of the agency rejected the Complaints Examiner's recommended finding that appellant was a "qualified handicapped person." Relying on Jasany v. U.S. Postal Service, 755 F.2d 1244 (6th Cir. 1985), the agency stated that reasonable accommodation does not include the elimination of essential functions of a position. Since appellant was unable to perform the normal duties or essential functions of a regular Distribution Clerk, the agency concluded that appellant was not a "qualified handicapped person" as that term is defined in EEOC Regulation 29 C.F.R. §1613.702(f). In the agency's opinion the Complaints Examiner's recommended finding that the appellant could perform the essential functions of a Time and Attendance Clerk position ignored the fact that appellant was reemployed as a Distribution Clerk. Assuming, arguendo, that appellant was a qualified handicapped person, the agency found that the differing treatment accorded fully-recovered employees and partially-recovered employees in terms of within-grade step increases was consistent with 5 U.S.C. §8151. Accordingly, the agency rejected the recommendation of the Complaints Examiner and found that appellant had not been discriminated against based on physical handicap in violation of the Rehabilitation Act.

ANALYSIS AND FINDINGS

The first issue to be addressed is whether appellant is entitled to the protections of the Rehabilitation Act. It is not disputed that appellant is a "handicapped person" as that term is defined in EEOC Regulation 29 C.F.R. §1613.702(a). However, relying on Jasany v. U.S. Postal Service, 755 F.2d 1244 (6th Cir., 1985), the agency contends that appellant is not a "qualified handicapped person" in that, with or without accommodation, appellant cannot perform the essential functions of a regular Distribution Clerk position without endangering his health and safety. In Jasany, the plaintiff was hired primarily to operate the LSM-ZMT machine. Because of a mild case of strabismus, the plaintiff was unable to operate the machine. The Court held that the "post office was not required to accommodate Jasany by eliminating one of the essential functions of his job." Jasany, supra at 1250 (emphasis in original).

The holding of Jasany, supra, is consistent with EEOC Regulation 29 C.F.R. §1613.704(b) in that the "job restructuring" permitted by the regulation does not require the elimination of essential functions of the employee's position. However, Jasany and EEOC Regulation 29 C.F.R. §1613.704(b) are of limited applicability in the instant case in light of the agency's voluntary restructuring of appellant's position.

(Footnote Continued)
calendar days. However, EEOC Regulation 29 C.F.R. §1613.604(i) is only applicable to class action complaints. Pursuant to EEOC Regulation 29 C.F.R. §1613.220(d), the agency had 30 calendar days from date of receipt to reject or modify the Recommended Decision of the Complaints Examiner.

Here, the agency's voluntary offer of reemployment recognized appellant's physical restrictions. Further, the agency agreed to assign duties to appellant which were within his physical limitations. At the hearing, witnesses testified that appellant spent about six hours a day on timekeeping duties. Said duties were within appellant's physical limitations. Appellant was assigned to the Box Section for approximately two hours a day. While he was unable to perform some duties, he was able to box mail, a principal function of the Box Section. While appellant's physical restrictions prevented him from performing all of the the essential functions of a regular Distribution Clerk, the agency's voluntary offer of reemployment modified the duties of a Distribution Clerk position so as to accommodate appellant's physical restrictions. Evidence that appellant's job title was "Distribution Clerk" and that appellant was unable to perform the regular duties of a Distribution Clerk does not remove appellant from the protections of the Rehabilitation Act. In view of the agency's voluntary commitment to assign duties to appellant which were within his physical restrictions as well as appellant's performance of the essential functions of his timekeeping duties and his ability to box mail, the Commission finds that appellant is a "qualified handicapped person" entitled to the protection of the Rehabilitation Act.

In the context of injured employees returning to work more than one year after commencement of compensation, it is not disputed that the agency treats fully-recovered employees more favorably than partially-recovered employees.[11] Thus, the Commission finds that appellant has established a prima facie case of disparate treatment based on physical handicap. Prewitt v. U.S. Postal Service, 662 F.2d 292, 305, n. 19 (5th Cir. 1981). The agency contends that 5 U.S.C. §8151(a), as interpreted by the Office of Personnel Management, authorizes this disparate treatment. Thus, the next issue to be addressed is essentially an issue of law -- namely, whether 5 U.S.C. §8151(a) authorizes the disparate treatment of partially recovered injured employees, thereby limiting the scope of the Rehabilitation Act.

The Federal Employees Compensation Act (FECA), as amended, 5 U.S.C. §8151, sets forth the retention rights of injured or disabled employees of certain Federal government departments and agencies, including the United States Postal Service.[12] The statute provides, in relevant part, that in "the event the

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[11]The agency stipulated that, had appellant returned to work fully-recovered after being off work for over a year, appellant would have received the step increases for the period he was receiving compensation.

[12]The legislative history of FECA reflects that 5 U.S.C. §8151 was added to the Act in 1974. In Senate Report No. 93-1081, the Labor and Public Welfare Committee stated that the amendment made by Section 22 (§8151) assured "injured employees who are able to return to work at some later date that, during their

(Footnote Continued)

individual resumes employment with the Federal Government, the entire time during which the employee was receiving compensation under this chapter shall be credited to the employee for the purposes of within-grade step increases...." (emphasis added). By letter dated March 6, 1979, OPM advised the agency that 5 U.S.C. §8151(a) applied to a former employee whose disability is partially overcome more than one year after the commencement of compensation benefits.

The agency relies on OPM's opinion that a partially recovered employee, who is restored more than one year after the commencement of compensation benefits, "may be restored to any position -- even one at a lower pay and grade than the one he or she left." However, OPM's opinion that a partially recovered employee may be restored to any position, even one that is at a lower pay and grade, is not applicable to the instant case. The record reflects that appellant was restored to the position he previously held, namely, Distribution Clerk, albeit the duties were modified to accommodate appellant's handicap.

Similarly, the agency argues that its interpretation of 5 U.S.C. §8151(a) is consistent with the interpretation given by the Office of Workers' Compensation Programs of the Department of Labor. In a pamphlet entitled "Federal Injury Compensation," OWCP answered questions about FECA. Specifically, the agency relies on OWCP's answers to Questions 72 and 73. The agency appears to argue that since it is theoretically possible to rehire an injured employee at a lower rate of pay, then 5 U.S.C. §8151(a) cannot be interpreted as requiring that a partially-recovered employee be given credit for time on compensation for the purpose of within-grade step increases. However, the Commission notes that OWCP's response to Question 77 is not in conflict with OPM's statement that 5 U.S.C. §8151(a) is applicable to partially recovered employees. OWCP explained that the provision assures Federal employees injured on-the-job that "upon their return to Federal employment they will incur no loss of benefits which they would have received but for the injury (or disease)."

In the agency's January 24, 1985 prehearing statement, the agency represented that the MSPB had determined the Postal Service's actions were in accordance with 5 U.S.C. §8151 and applicable regulations. The Commission notes that the Board's October 26, 1981 Decision found that the agency had fulfilled its obligation to restore appellant. The Board further noted that "[a]ppellant's claims do not go to the issue of restoration, per se, but to his apparent belief that he should have been restored to a wholly different position [Letter Carrier] at a different rate of pay from the one he had held. The Board does not have jurisdiction to consider this aspect of appellant's claim." (emphasis added). Thus, it is evident that the MSPB decision did not address appellant's

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(Footnote Continued)
period of disability, they will incur no loss of benefits that they would have received were they not injured." The Senate Report does not distinguish between fully-recovered employees and partially-recovered employees.

contention as to his within-grade step level. See Robert Jorgensen v. U.S. Postal Service, MSPB No. SE03538110038, October 26, 1981.[13]

In addition, the agency directs the Commission's attention to the decision of an Arbitrator in U.S. Postal Service v. American Postal Service Union, Grievance Nos. H8C-4A-C-11834, 11772 and 11832, dated September 3, 1982. The union claimed that the two grievants should have been reinstated at the salary levels they would have occupied had they not been injured on-the-job. However, the Arbitrator's decision focused on the union agreement. The Arbitrator noted that, pursuant to a provision of the union agreement, the union had the opportunity to challenge Postal Service regulations which denied step increases to partially recovered employees. However, in the opinion of the Arbitrator the union failed to challenge the regulation at the appropriate time. Accordingly, the Arbitrator denied the grievances. Since the focus of the Arbitrator was whether the agency had violated the union contract and whether the union had timely challenged the alleged violation, the Arbitrator's decision is of limited relevance to the instant case.

Finally, the agency argues that step increases are not automatic. Rather, they are based on merit. However, the agency concedes that had appellant returned as a fully recovered employee, appellant would have been given credit for step increases to which he would have been entitled but for the injury. Thus, in some instances employees are given credit for time on workers' compensation without regard to merit.

In view of the purpose of the legislation, OPM's interpretation of 5 U.S.C. §8151(a) as applying to partially recovered employees, and the specific reference in 5 U.S.C. §8151(a) to within-grade step increases, the Commission finds that the agency erred in interpreting 5 U.S.C. §8151(a) as permitting disparate treatment between partially recovered and fully recovered injured employees. In summary, 5 U.S.C. §8151 and the Rehabilitation Act are complementary. The minimum restoration rights and benefits due former civil servants who sustain on-the-job injuries are set forth in 5 U.S.C. §8151. The Rehabilitation Act provides, in part, that "handicapped" persons (including former federal employees who have partially recovered from on-the-job injuries) are not subjected to discrimination in the form of disparate treatment because of their handicaps.

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[13] Similarly, in James Blackburn v. U.S. Postal Service, MSPB No. SF03538110476, July 30, 1982, the Board on its own motion vacated an Initial Decision in favor of the appellant therein and dismissed the appeal for lack of jurisdiction. The Initial Decision in Blackburn had held that the appellant was entitled to be rehired at the step level he would have held in the absence of the injury.

Having given within-grade step increases to fully recovered injured employees who resume employment more than one year after commencement of compensation, the agency is required by §501 of the Rehabilitation Act, as amended, to give within-grade step increases to similarly situated partially recovered injured employees. Accordingly, the Commission finds that the agency violated the Rehabilitation Act by denying appellant, a qualified handicapped person, the within-grade step increases to which he would have been entitled had he fully recovered from his on-the-job injury. Accordingly, the final agency decision is REVERSED.

CONCLUSION

Based upon a review of the record, the decision of the Equal Employment Opportunity Commission is to reverse the agency's finding of no discrimination based on handicap and to enter a finding of discrimination based on handicap. In order to remedy its past discrimination against appellant, the agency shall comply with the directions of the following Order:

ORDER

A. Since the record establishes that appellant would have been rehired at a higher step level but for the discrimination herein, the agency is directed to immediately and retroactively amend personnel records to reflect that appellant was rehired on November 24, 1980 and March 31 1981 at the appropriate within-grade step level with backpay and all other benefits which would have accrued in the absence of discrimination. Backpay shall be computed in the same manner as prescribed by 5 C.F.R. §550.805.

B. The agency is directed to ensure that appellant and similarly situated handicapped employees are not subjected to discrimination in the future.

C. The agency is directed to post at its facility in Eugene, Oregon, copies of the attached notice. Copies of the notice, after being signed by the agency's duly authorized representative, shall be posted by the agency immediately upon receipt, and be maintained by it for 60 consecutive days, in conspicuous places, including all places where notices to employees and applicants for employment are customarily posted. The agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material.

IMPLEMENTATION OF THE COMMISSION DECISION

Under EEOC regulations, compliance with the Commission's corrective action is mandatory. The agency must report to the Commission, within thirty (30) calendar days of receipt of the decision, that corrective action has been taken. The agency's report should be forwarded to the Compliance Officer, Office of Review and Appeals, Equal Employment Opportunity Commission, 5203 Leesburg Pike, Falls Church, Virginia, 22041. A copy of the report should be sent to the appellant.

Summary

Based on the above, the Commission finds that appellant has established a *prima facie* case of sexual harassment, but that the agency was able to show by clear and convincing evidence that she would not have been reinstated regardless of the harassment. Further, appellant has failed to prove a *prima facie* case of discrimination based on mental handicap, retaliation and sex. Appellant's allegation of constructive discharge is untimely.

Conclusion

Based upon a thorough review of the record and for the foregoing reasons, the Commission concludes that appellant has failed to establish discrimination based on sex, handicap, and/or reprisal. It is therefore the decision of the Commission to AFFIRM the agency's final decision finding no discrimination.

[See RR-C, FEOR p. I-402 for Statement of Review Rights.]

[1] 29 C.F.R. Part 1614 (57 Fed. Reg. 12634) became effective October 1, 1992. This rule revises the way federal agencies and the Equal Employment Opportunity Commission will process administrative complaints and appeals of employment discrimination filed by federal employees and applicants for federal employment.

[2] The EEO counselor's report fails to indicate that appellant alleged retaliation; however, a reprisal allegation was included in appellant's request for counseling.

[3] In her formal complaint, appellant marked retaliation as the only basis and noted that the EEO counselor had erroneously investigated her complaint as one alleging sex discrimination, when her complaint "was more directly on reprisal." Although the agency's letter accepting appellant's complaint indicated that the only basis alleged was sex discrimination, the investigation encompassed both reprisal and sex discrimination.

[4] The AJ added these bases over the objection of the agency, which requested that the complaint be remanded for a supplemental investigation.

[5] During this period, appellant took 80 hours of sick leave, which included 32 hours of disapproved sick leave, in addition to 32 hours of AWOL.

[6] It is not clear from the complaint file when appellant's resignation letter was received by the agency.

[7] According to hearing testimony, loudspeakers were located throughout the postal facility and were used to page employees.

[8] Appellant testified that she had given this letter to a union official prior to her resignation.

[9] To the extent that appellant intended to raise a claim of hostile environment sexual harassment, such a claim was untimely raised. The Commission apprises the agency, however, that given the AJ's credibility determinations regarding Supervisor 1's testimony and the patently offensive and pervasive nature of the conduct alleged, appellant's allegations may well have resulted in a finding that a hostile environment had existed. We remind the agency of its manifest duty to ensure that conduct such as that of Supervisor 1 does not recur in the future.

¶933062

JACKSON
EEOC Comm.

Richard Jackson v. Runyon, Postmaster General, U.S. Postal Service

EEOC No. 01923399
November 12, 1992

4.0241 Individual Complaint/Agency EEO Procedure, Informal Adjustment, Offer
43.0211 Remedies, Damages, Compensatory
43.048 Remedies, Make-Whole

SUMMARY

To resolve the appellant's complaint alleging sex, color, age, physical handicap, and reprisal discrimination (he was followed and harassed during the performance of his duties by a 2048 supervisor at the direction of a higher-level agency official), the agency forwarded the appellant a settlement agreement, which had been certified as full relief by an appropriate agency official. The agreement provided that appellant would be "treated fair and equally as all other employees" and would be "treated with dignity and respect." There was no evidence that the appellant responded to the agency's offer; thereafter, the agency canceled appellant's complaint for failure to accept a certified offer of full relief. On appeal, the Commission concluded that the agency's offer, in fact, did not constitute an offer of full relief because it failed to address the issue of compensatory damages in the form of medical expenses allegedly incurred by appellant as a result of the stress caused by the agency's alleged harassment. The Commission held, in this precedent-setting decision, that the Civil Rights Act of 1991 makes compensatory damages available to federal sector complainants in the administrative process. The Commission explained that where a complainant shows objective evidence that he or she has incurred compensatory damages, and that the damages are related to the alleged unlawful discrimination, the agency must address the issue of compensatory damages in its offer of full relief. Because the appellant requested damages for medical expenses incurred, the agency, prior to making its offer of full relief, should have requested from the appellant objective evidence of the alleged damages incurred. However, it also held that an agency need only consider the issue of compensatory damages for alleged discriminatory conduct occurring on or after November 21, 1991 (the effective date of the Civil Rights Act of 1991). Thus, because the appellant was not obliged to accept the agency's offer, the agency's decision to cancel the complaint under 29 CFR 1614.107(h) was vacated. The complaint was remanded for further processing.

Decision

Introduction

On July 7, 1992, Richard Jackson (hereinafter referred to as appellant) timely initiated an appeal to the Equal Employment Opportunity Commission (EEOC) from the final decision of the Postmaster General, United States Postal Service (hereinafter referred to as the agency), received on July 6, 1992. The agency's decision cancelled appellant's complaint pursuant to

29 C.F.R. § 1613.215(a)(7) for failure to accept an offer of full relief. Appellant's appeal was initiated pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, § 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791 *et seq.*, and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 *et seq.* This appeal is accepted for decision by the Commission in accordance with EEOC Order No. 960, as amended.

Issue Presented

The issue presented herein is whether the agency properly cancelled appellant's complaint on the grounds that appellant failed to accept a certified offer of full relief.

Background

A review of the record reveals that appellant filed a formal complaint dated April 3, 1992, alleging discrimination on the bases of sex (male), color (black), age (44), physical handicap (high blood sugar, hypertension, heart condition), and reprisal (prior EEO activity), when on or about January 10, 1992, he was followed and harassed during the performance of his duties by a 204B supervisor (hereinafter Supervisor A), at the direction of a higher-level agency official (hereinafter Supervisor B). During EEO counseling, appellant requested, *inter alia*, a written apology, that Supervisor B be transferred out of the Maintenance Unit, that the harassment stop and he be treated with dignity and respect, and damages for medical expenses.

By letter of May 20, 1992, the agency forwarded to appellant a settlement agreement, which had been certified as full relief by an appropriate agency official on May 13, 1992. Appellant was informed that if he failed to accept the agency's offer within fifteen days, his complaint would be subject to cancellation under applicable Regulations. 29 C.F.R. § 1613.215(a)(7). The settlement agreement provided that appellant would be "treated fair and equally as all other employees" and would be "treated with dignity and respect." There is no evidence in the record that appellant responded to the agency's offer.

Thereafter, the agency issued a final agency decision (FAD) dated June 26, 1992, cancelling appellant's complaint for failure to accept a certified offer of full relief in accordance with 29 C.F.R. § 1613.215(a)(7). This appeal followed.

On appeal, appellant, through his representative, indicates that all he has been offered by management is a "formula of trite phrases." Appellant reasserts that Supervisors A and B treated him in a discriminatory manner; in addition, appellant contends that his allegations were given only a cursory investigation by the agency. Finally, appellant states that this particular incident as well as other incidents involving Supervisor B have caused appellant needless stress. Appellant states that he suffers from high blood pressure, and that this incident in particular has exacerbated his condition to the extent that he has had to seek additional medical care. Appellant contends that the cost of transportation to the doctor, the cost of necessary medication, and a portion of the doctor's fees should be borne by the agency. Appellant also requests an apology from Supervisor B.

Analysis and Findings

Pursuant to EEOC Regulation 29 C.F.R. § 1614.107(h), (formerly 29 C.F.R. § 1613.215(a)(7)), an agency may cancel a complaint if the complainant rejects a certified offer of full relief. The agency must provide written certification to the complainant at the time the offer is presented that the offer constitutes full relief. When the complainant refuses to accept the agency's offer within fifteen calendar days of its receipt, the agency may cancel the complaint. In the instant case, the agency cancelled appellant's complaint when appellant did not respond to the agency's certified offer of full relief. Therefore, the dispositive issue concerns whether or not the agency's offer constituted full relief for the allegations raised in appellant's complaint.

Full relief is defined as that relief that would have been available to appellant had he prevailed on every issue in his complaint. *See Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975). In *Albemarle*, the court held that the purpose of Title VII is to make victims whole. *Albemarle*, 422 U.S. at 418-19. This requires eliminating the particular unlawful employment practice complained of, as well as restoring the victim to the position he or she would have occupied were it not for the unlawful discrimination. *Albemarle*, 422 U.S. at 420-21. Accordingly, the offer of full relief must be evaluated in terms of whether or not it includes everything to which the complainant would be entitled if a finding of discrimination were entered with respect to all of the allegations in the complaint. *Deborah Merriell v. Department of Transportation*, EEOC Request No. 05890596 (August 10, 1989) [90 FEOR 3034].

In this case, the agency's offer provides that appellant will be treated fairly and in the same manner as other employees, and that he will be treated with dignity and respect. The agency's offer, however, fails to address the issue of compensatory damages in the form of medical expenses allegedly incurred by appellant as a result of the stress caused by the agency's alleged harassment. The Commission finds that the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071, ("CRA") makes compensatory damages available to federal sector complainants in the administrative process. This conclusion is based upon a thorough examination of the statute's language and policy considerations.

Where the complainant shows objective evidence that he or she has incurred compensatory damages, and that the damages are related to the alleged unlawful discrimination, the agency must address the issue of compensatory damages in its offer of full relief.[1] Here, the appellant has stated that he suffered stress from the agency's alleged harassment, and that this stress resulted in his seeking additional medical care for his high blood pressure. The record shows that in the pre-complaint counseling process, the appellant requested damages for medical expenses incurred. Accordingly, prior to making its offer of full relief, the agency should have requested from the appellant objective evidence of the alleged damages incurred. In this case, such proof could have taken the form of receipts and/or bills for medical care, medication and transportation to the doctor. In addition, the agency should have requested that appellant provide objective evidence linking these damages to the alleged unlawful discrimination. Such a showing would have been sufficient to require the agency to address the issue of compensatory damages in its offer of full relief. The relief offered by the agency, however, did not address the issue of compensatory damages. The Commission finds therefore that the agency's offer does not constitute full relief.[2]

When a federal agency or the EEOC finds that a federal employee has been discriminated against, the agency must provide full relief.[3] *See* 29 C.F.R. § 1614.501(a); 29 C.F.R. Part 1613, Appx. A. Under the CRA, this would include a payment of compensatory damages to an identified victim of discrimination on a make-whole basis for any losses suffered as a result of the discrimination. *See* EEOC Notice No. 915.002, "Enforcement Guidance: Compensatory and Punitive Damages Available under § 102 of the Civil Rights Act of 1991" (July 14, 1992). The Commission has recognized that the basic effectiveness of its law enforcement program, whether in the private or federal sector, is dependent upon securing prompt, comprehensive and complete relief for individuals affected by violations of the statutes it enforces. *See* 29 C.F.R. Part 1613, Appx. A.

Section 102 of the CRA permits a complaining party pursuing an "action" under Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e *et seq.*, the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12101 *et seq.*, or the federal employment sections of the Rehabilitation Act of 1973, 29 U.S.C. § 791, to recover compensatory damages in the case of intentional discrimination. While it may be argued that the term "action" as used in the CRA refers only to a civil action in court, such an interpretation is not supported by the statutory language of the CRA as a whole and the principles of statutory interpretation.

Subsection 102(a)(1) of the CRA provides that: "In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-5) against a respondent who engaged in unlawful intentional discrimination . . . the complaining party may recover compensatory and punitive[4] damages . . . in addition to any other relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent." Subsection 102(a)(2) provides that: "In an action brought by a complaining party under the powers, remedies, and procedures set forth in . . . section 505(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. § 794a(a)(1)) . . . against a respondent who engaged in unlawful intentional discrimination . . . under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. § 791) and the regulations implementing section 501, or who violated the requirements of section 501 of the Act or the regulations implementing section 501 concerning the provision of a reasonable accommodation . . . the complaining party may recover compensatory and punitive damages . . . from the respondent."

Subsection 102(a)(2), cited above, expressly permits a complaining party to recover damages for violations of the Rehabilitation Act through the federal sector regulations and procedures providing administrative relief under the Rehabilitation Act. Accordingly, the term "action" in this subsection includes both court actions and the administrative process.[5] This language clearly provides compensatory damages in the administrative process for actions brought under the Rehabilitation Act. Although subsection 102(a)(1) does not make reference to the federal sector regulations implementing the Civil Rights Act of 1964, there is nothing in the legislative history of the CRA to indicate that Congress intended to treat the individuals protected by these two statutes differently. The Commission finds that the most plausible reason for the failure of subsection 100(a)(1) to mention the administrative process is that Section 717 of the Civil Rights Act of 1964 explicitly provides for an administrative complaint process, while section 501 of the Rehabilitation Act lacks such a provision. The difference in the language of the two subsections is merely a statutory recognition by the drafters of the CPA that the administrative complaint process under the Rehabilitation Act derives from, and is patterned on, the administrative procedure authorized under section 717 of Title VII of the Civil Rights Act of 1964, as amended.

Further support for the conclusion that compensatory damages are recoverable in the administrative process comes from the definition of "complaining party" in subsection 102(d)(1)(A).[6] That subsection defines the term "complaining party" for purposes of section 102 as follows:

> The term "complaining party" means—in the case of a person seeking to bring an action under subsection (a)(1), the [EEOC], the Attorney General, or a person who may bring an action or proceeding under title VII of the Civil Rights Act of 1964. . . .[7]

Complaining party is similarly defined in section 102(d)(1)(B) for persons bringing an "action or proceeding" under the Rehabilitation Act or the Americans with Disabilities Act.

The definition of complaining party provided by subsection 102(d)(1)(A) relates directly back to subsection 102(a)(1) and expressly includes within the group of persons bringing an "action" under subsection 102(a), any person who may bring an action or proceeding under Title VII. Complaining party, as defined, is consistent with subsection 102(a)(2). The definition of a complaining party defines the scope of subsection 102(a)(1) to provide complainants with an option to pursue their damage remedy in either an "action or proceeding."

It is a cardinal principle of statutory interpretation that courts are required to give effect to every clause and word of a statute, if possible. *See United States v. Menasche*, 348 U.S. 528 (1955); *R.E. Dietz Corp. v. United States*, 939 F.2d 1, 5 (2d Cir. 1991). When read together, subsections 102(a)(1), 102(a)(2), and 102(d) permit a complaining party under Title VII or the Rehabilitation Act to obtain compensatory damages in either an action or proceeding. The plain meaning of the term "proceeding" includes administrative proceedings.[8]

The Supreme Court's decision in *New York Gaslight Club v. Carey*, 447 U.S. 54 (1980), is instructive as to the meaning of the term "proceeding" as it is used by Congress. In that case the Court addressed for the first time issues that arise when administrative proceedings are used to enforce civil rights. The Court authorized an award of attorney's fees in federal court litigation for work performed in State administrative proceedings. The Court focused on the requirement in Title VII that complainants first pursue state administrative remedies before filing an action in federal district court. Having successfully enforced her rights at the State administrative level, the plaintiff sought recovery of attorney's fees in federal court under Title VII's fees provision. The Court decided that use of the words "action or proceeding" included in Title VII's fee provision indicated Congress' intent to authorize fee awards for work done in administrative proceedings and, therefore, the availability of attorneys' fees would not depend on whether the claimant succeeded at the administrative level or prevailed in court.[9] Thus, Congress' use of the words "or proceeding" was more than surplusage.

The holding in *New York Gaslight Club* that the words "or proceeding" is more than surplusage supports the conclusion that the use of the same words in section 102(d)(1)(A) is an expression of Congress' intent to provide damages in the administrative process. Had Congress intended to require complainants to file civil actions to recover damages, it simply could have used language in subsections 102(a)(2) and 102(d) identical to that in subsection 102(a)(1) and not mentioned other proceedings and actions under the regulations.

Another relevant concern of the Supreme Court in *New York Gaslight Club* was that if fees were not awarded for conclusive administrative proceedings, the result would be the filing of unnecessary lawsuits. The existence of an incentive to file a complaint in federal court, such as the availability of a fee or damage award, would ensure that almost *all* Title VII complainants would abandon the administrative process for the courts as soon as possible.

For the foregoing reasons, the Commission finds that in the context of an offer of full relief, the agency's offer must address compensatory damages where the complainant shows some objective evidence that he or she has incurred compensatory damages, and that the damages are related to the alleged unlawful discrimination. The agency need only consider the issue of compensatory damages for alleged discriminatory conduct occurring on or after November 21, 1991. Because the appellant in this case made a claim for damages related to the alleged discriminatory conduct of the agency, the agency should have requested from the appellant some objective proof of the alleged damages incurred, as well as objective evidence linking those damages to the adverse actions at issue, prior to making its offer of full relief. Therefore, appellant was under no obligation to accept the agency's offer, and the agency's decision to cancel the complaint for failure to accept a certified offer of full relief was improper and is VACATED. *See* 29 C.F.R. § 1614.107(h). The complaint is hereby REMANDED to the agency for further processing from the point processing ceased in accordance with this decision and applicable Regulations.

Conclusion

Based upon a review of all the evidence of record, the decision of the Equal Employment Opportunity Commission is to VACATE the agency's final decision, which cancelled appellant's complaint for failure to accept an offer of full relief. The complaint is hereby REMANDED to the agency for further processing in accordance with this decision and the Order below.

Order

The agency is ORDERED to process the remanded allegations in accordance with 29 C.F.R. § 1614.108. The agency shall acknowledge to the appellant that it has received the remanded allegations within thirty (30) calendar days of the date this decision becomes final. The agency shall issue to appellant a copy of the investigative file and also shall notify appellant of the appropriate rights within one hundred fifty (150) calendar days of the date this decision becomes final, unless the matter is otherwise resolved prior to that time. If the appellant requests a final decision without a hearing, the agency shall issue a final decision within sixty (60) days of receipt of appellant's request.

A copy of the agency's letter of acknowledgement to appellant and a copy of the notice that transmits the investigative file and notice of rights must be sent to the Compliance Officer as referenced below.

Implementation of the Commission's Decision

[See ICD, p. I-403.]

[See RR-A, FEOR pp. I-401-402 for Statement of Review Rights.]

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[1] The Commission has determined that compensatory damages are available for alleged discriminatory conduct occurring on or after November 21, 1991 (the effective date of the CRA). See Commission Policy Guidance on Application of Damages Provisions of the Civil Rights Act of 1991 to Pending Charges and Pre-Act Conduct (December 27, 1991).

[2] The Commission notes appellant's request for an apology; however, the Commission has held that an apology is not a necessary element of full relief. *See Shirley Hoskinson v. United States Postal Service*, EEOC Request No. 05880752 (February 2, 1989). Furthermore, a further assurance of no future harassment by any particular official, which the agency is already obligated by law to ensure, is not necessary. *Reynaldo Gonzalez v. Clayton Yeutter, Secretary, Department of Agriculture*, EEOC Request No. 05910801 (September 6, 1991) [92 FEOR 3083].

[3] Congress extended Title VII's protection to federal employees in 1972. "The provisions adopted by the committee will enable the Commission to grant full relief to aggrieved employees, or applicants. . . . Aggrieved employees or applicants will also have the full rights available in the courts as are granted to individuals in the private sector under title VII." S. Rep. No. 415, 92d Cong., 1st Sess. 16 (1971).

[4] Subsection 102(b)(1) prevents complainants from seeking punitive damages against a government, government agency or political subdivision.

[5] During the Senate debate on the CRA, an amendment concerning Congress' exemption from civil rights laws was considered. That amendment used the term "action" to mean administrative action. 137 Cong. Rec. Section 15350 (daily ed. Oct. 29, 1991).

[6] Under accepted canons of statutory interpretation, statutes must be interpreted as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous. *Boise Cascade Corp. v. U.S.E.P.A.*, 942 F.2d 1427, 1432 (9th Cir. 1991) (quoting Sutherland Stat. Const. §§ 46.05, 46.06 (4th ed. 1984)). Specific words within a statute may not be read in isolation of the remainder of that section or the entire statutory scheme. *Sutton v. United States*, 819 F.2d 1289, 1293 (5th Cir. 1987).

[7] CRA, Section 102(d)(1)(A).

[8] The term "proceeding" is defined as including both juridical business before a court as well as administrative proceedings before agencies and tribunals. Black's Law Dictionary 1083 (5th ed. 1979).

[9] 447 U.S. at 61-62, 66.

JUL 26 1979

Dear Mr. Newman:

In your letter of June 25, 1979, you question whether rural carriers are entitled to light duty assignment in the clerk craft under Article XIII of the 1978 National Agreement with the APWU and other national Postal Unions.

The Rural Carriers did not participate in the referenced 1978 National Agreement and therefore are not entitled to light duty assignments under Article XIII of that agreement. On the other hand such assignments made pursuant to previous National Agreements in which the Rural Carriers did participate, would continue until terminated.

With respect to the two light duty assignments in Spring, Texas, referred to in your letter, we have been advised there are no light duty assignments in Spring, Texas. There is one limited duty assignment; Kathleen Tramm, a rural carrier, was injured on duty and placed on limited duty as a clerk effective January 20, 1979. She is still on limited duty as a clerk but was converted to city carrier on June 16, 1979.

Such limited duty assignments are not made pursuant to Article XIII but pursuant to our mutual obligations under the Federal Employee's Compensation Act to return employees with job related injuries to duty subject to their medical restrictions.

Sincerely,

(signed) James C. Gildea

James C. Gildea
Assistant Postmaster General
Labor Relations Department

Forrest M. Newman, Director
Industrial Relations
American Postal Workers Union, AFL-CIO
817 14th Street, N. W.
Washington, D. C. 20005

Mr. Gildea (2)
bcc: Mr. Crowe
Mr. Mitchell

The parties further agree that the limitations relative to arbitrator contact listed above are in addition to those expressed in the parties' Conditions of Appointment for Arbitrators.

Anthony J. Vegliante
Manager
Grievance & Arbitration
U.S. Postal Service

Moe Biller
President
American Postal
Workers Union,
AFL-CIO

11/21/95
Date

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

September 23, 1988

MEMORANDUM FOR REGIONAL DIRECTORS AND FIELD DIRECTORS
HUMAN RESOURCES

GENERAL MANAGER
HEADQUARTERS PERSONNEL DIVISION

Subject: MSPB Precedent Affecting Light Duty

On April 6, 1988, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) issued a decision in Horner v. Schuck and Washington, et al., 843 F.2d 1368 (Fed. Cir. 1988), 88 FMSR 7013. The court affirmed the decision of the Merit Systems Protection Board (MSPB) that the placement of veteran preference eligible full-time regular employees who are in light duty assignments in a non-pay, non-duty status for a portion of the day whenever work is not available within their job restrictions constitutes a furlough. The effect of this decision is that the Postal Service may not work full-time regular veteran preference eligible employees on light duty assignments who are able to work for 8 hours a day or 40 hours a week for less than 8 hours a day or 40 hours a week without incurring possible liability in the event that an appeal is filed with the MSPB. Part-time flexible employees would be entitled only to their minimum guarantee under the contract.

Where an employee's own physician limits his or her time at work to less than 8 hours per day or less than 40 hours per week, that employee would not be considered furloughed when limited to the hours of work established by that employee's physician. In addition, employees may be permitted to voluntarily use sick leave, annual leave, or leave without pay for a portion of the day for which there is no work available within his or her medical restrictions.

The Federal Circuit's decision will be applied by the MSPB to any appeals which are filed by employees on light duty assignments who claim that they have been furloughed. The following courses of action may provide a means for offices to mitigate the effect of this decision.

o Requests for Light Duty

Careful consideration should be given to requests for light duty from all employees. Article 13 places certain obligations upon the employee requesting the light duty assignment, i.e., that the request for temporary light duty be in writing, that a supporting medical statement or certificate accompany requests for either temporary or permanent light duty, etc. See Article 13.2.A and B. Employees making requests for light duty should be expected to comply with these requirements. Further, verification of the information provided should be made prior to issuing a decision on the request.

o Offer of Light Duty Assignment

The decision on the request for light duty must be in writing to the employee. When considering requests for light duty from veteran preference eligibles who may appeal to the MSPB and those who are not preference eligibles, available hours should be given to the veteran preference eligible over a non-veteran preference eligible, regardless of seniority.

If the decision is to deny the request for the light duty assignment, the employee must be advised of the reasons why the request has not been granted. Where the decision is to approve the light duty assignment, the employee should be advised of the nature of the assignment and that there is no guarantee of any number of hours of work per day or per week. The workweek of a light duty employee is based on the needs of the Service and may depart from the normal workweek as defined in the hours of work portions of the various collective bargaining agreements.

A sample letter has been enclosed for use in advising employees that their requests for a light duty assignment have been approved. You will note that where the offer is made to a veteran preference eligible employee with one year of current continuous service in the same or similar position, the letter provides for the acknowledgment by the employee that he or she understands and accepts the conditions of the light duty assignment. This acknowledgment should be signed and returned to the office prior to the employee commencing the light duty assignment.

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

June 4, 1997

Dear Mr Bazylewicz:

Pursuant to the provisions of the national agreement this is to appeal to arbitration the parties dispute over the interpretation of Article 13 when employees request accommodation within their assigned duties. Your response of May 13, 1997 does not address the interpretive issue that is raised. As presented in the union's correspondence of April 1, 1997 the union interprets the contract as employee request for accommodation in their current duty assignment are not governed by request for light duty under Article 13.

In the facts given rise to this case, the employees were physically "able to perform their assigned duties" and their request for accommodation was governed by the Pregnancy Discrimination Act. It is only after the employer has determined that reasonable accommodation in the employees duty assignment cannot be made does further request by the employee for a "light duty" assignment fall under the provisions of Article 13 of the national agreement.

The union request that employees with temporary disabilities who have requested "reasonable accommodation" which have been denied based upon the unavailability of "light duty" assignments be made whole.

Sincerely,

William Burrus
Executive Vice President

Pete Bazylewicz, Manager
Grievance & Arbitration
Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

May 13, 1997

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This letter is in response to your correspondence dated April 1, 1997 concerning the application of Article 13, "Assignment of Ill or Injured Regular Workforce Employees". Specifically, you allege that management at the Memphis BMC has adopted a policy of denying employees the opportunity to work their bid assignments and considers their request for accommodation as a request for light duty. You have not provided any evidence that there is such a management policy at the Memphis BMC.

The Union interprets the provisions of Article 13 of the National Agreement as requiring the accommodation of employees in those circumstances within their present duty assignment.

Article 13.4(A), states clearly that 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. There is no mention of requirement within their present duty assignment. Please specify the provision of the agreement that supports the Union's position.

If there are any questions concerning this matter, you may contact Barbara Phipps of my staff at (202) 268-3834.

Sincerely,

Peter A. Sgro
Acting Manager
Contract Administration APWU/NPMHU

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

April 1, 1997

William Burrus
Executive Vice President
(202) 842-4246

Dear Mr. Scro:

Pursuant to the terms of the national agreement, this is to initiate a step 4 grievance over the interpretation of the employer's obligations under Article 13 the "Assignment of Ill or Injured Regular Workforce Employees". By previous letter I have attempted to obtain the employers interpretation of the national agreement in circumstances when employees are denied consideration for light duty. Your written response advises that it is not your intent to provide the employer's interpretation as applied to the cited circumstances.

It is apparent that you are not familiar with the provisions of Article 15, Section 4 of the national agreement which enables the union to initiate an issue at the national level to determine whether or not there is an interpretive dispute between the parties. As required by these provisions, following are the facts giving rise to the dispute and the precise interpretive issue to be decided.

Management at the Memphis BMC has adopted a policy of denying employees the opportunity to work their bid assignments and considers their request for accommodation as a request for light duty. This policy requires the employees to exhaust their 12 weeks of alloted Family and Medical Leave prior to their period of incapacity.

The circumstances giving rise to this inquiry are three pregnant employees who are physically capable of performing their assigned duties with accommodations normally applied to pregnancy. Local management has arbitrarily denied each request for accommodation, applying their circumstances as request for light duty.

The union interprets the provisions of Article 13 of the national agreement as requiring the accommodation of employees in those circumstances within their

present duty assignment. Such requests do not constitute request for temporary reassignment to light duty and the employer's decision is whether or not reasonable accommodations can be applied to the employees' circumstances.

Please respond to the employer's interpretation of Article 13 as applied to the above. Thank you for your attention to this matter.

Sincerely,

William Burrus
Executive Vice President

Peter Scro,Acting Manager
USPS Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

FEB 24 1984

Mr. James W. Lingberg
National Representative-at-Large
Maintenance Craft Division
817 14th Street, N. W.
Washington, D. C. 20005-3399

Dear Mr. Lingberg:

Recently you met with Frank Dyer in prearbitration discussion of H1C-NA-C 65. The question in this grievance is the delay in returning an employee to duty after an absence of 21-days or more of extended illness or injury.

It was mutually agreed to full settlement of this issue as follows:

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 work day provided adequate medical documentation is submitted within sufficient time for review.

2. The reasonableness of the Service in delaying an employee's return beyond his/her next work day shall be a proper subject for the grievance procedure on a case-by-case basis.

Please sign and return the enclosed copy of this letter acknowledging your agreement with this settlement, withdrawing H1C-NA-C 65 from the pending national arbitration listing.

Sincerely,

W. E. Henry Jr.
William E. Henry, Jr.
Director
Office of Grievance
and Arbitration
Labor Relations Department

James W. Lingberg
James W. Lingberg
National Representative-at-Large
Maintenance Craft Division
American Postal Workers Union,
AFL-CIO

Revisions to ELM, P-11, and EL-806

RETURN TO DUTY AFTER EXTENDED ILLNESS OR INJURY

Personnel Operations Handbook, P-11, Section 342.1; *Health and Medical Service Handbook*, EL-806, Section 160; and Employee and Labor Relations Manual (*ELM*), Chapter 860, is revised as follows:

P-11

342 Return to Duty After Extended Illness or Injury

342.1 Certification After *21 Days*

Employees returning to duty after 21 days or more of absence due to illness or serious injury must submit medical evidence of their ability to return to work, with or without limitations. A medical officer or contract physician evaluates the medical report and, when required, assists in employee placement to jobs where they can perform effectively.

EL-806

160 Fitness For Duty

161.1 Authority

A fitness-for-duty examination will be required when it is necessary to determine whether or not an employee is able to continue working or may return to his job after an absence due to illness or injury. Any absence for illness or injury over *21 days* requires a medical clearance from the treating physician to the responsible medical officer.

ELM

864.3 Physical Examinations—Fitness for Duty

Delete .34.

Add new Section 864.4 Return to Duty After Extended Illness or Injury.

.41 Certification After *21 days*.

Employees returning to duty after 21 days or more of absence due to illness or serious injury must submit medical evidence of their ability to return to work, with or without limitations. A medical officer or contract physician evaluates the medical report and, when required, assists in employee placement to jobs where they can perform effectively.

—Employee Relations Dept., 1-26-84.

Perishable Live Plant Shipments

To ensure that the Postal Service retains this important parcel volume, all facilities should be alert to the need to handle perishable live plant shipments within established service standards. The greatest volume of such shipments occurs from mid-February through April. These parcels, which originate from horticultural nurseries around the country, contain plants with bare roots and bulbs that are highly sensitive to climatic changes. Any extended exposure to temperature extremes could result in damage to the plants.

Because of the short shelf life of these plants, the shipments should be protected from extreme heat or cold and delivered as soon as possible following entry and processing.

—Customer Services Dept., 1-26-84.

Printed Stamped Envelopes

New procedures for ordering printed stamped envelopes were announced in Postal Bulletin 21435 (12-8-83), to be effective December 24.

Some post offices are not following those instructions and continue to send Forms 3203, *Order for Printed Stamped Envelopes*, without funds to the Stamped Envelope Agency. The Agency is taking exceptional measures to handle those orders.

Please review the procedures outlined in the bove referenced Postal Bulletin. Postmasters should take necessary steps, including notice to stations and branches, to make certain all window personnel comply with the new procedures.

—Customer Services Dept., 1-26-84.

IMM Revision

International Mail—Mexico

The Mexican postal authorities recently advised that an import permit is required when the value of a package exceeds 5,000 Mexican pesos. Mailers should be advised that addressees must obtain an import permit when that value is exceeded. This permit requirement is applicable to gift packages and commercial shipments.

Please make a write-in change to the Parcel Post Prohibitions and Restrictions section, Observation number 2, in the individual country listing for Mexico in the International Mail Manual (*IMM*).

This change will be incorporated in a future revision to the IMM.

—Rates & Classification Dept., 1-26-84.

DMM Revision

Address Card Dimensions

Effective immediately, Domestic Mail Manual (*DMM*), Section 945.3, paragraph *a* is changed to read:

a. *Size.* All cards must be standard card stock and identical in size. The cards must be within the following dimensions: Length: *5 inches to 8 5/16 inches* and Height: *2 1/4 inches to 4 1/4 inches*. It is recommended that all cards be the size of a standard 80-column computer card (i.e., 7 5/16 inches in length by 3 1/4 inches in height).

—Delivery Services Dept., 1-26-84.

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Federal Employees' Compensation
Washington, D.C. 20210

DEC 4 1992

File Number:

William P. Sims Jr. President
California American Postal Workers
Union AFL-CIO
3120 University Avenue
San Diego, California 92104

Dear Mr. Sims:

I am writing in reply to your letter of November 20 in which you posed a series of questions. Below, I have provided the answers.

There are no annotations, codes, or any identifying marks of any kind, type, or description that denote materials such as video tapes or investigative memorandums or other reports or materials that may pertain to the case file. It is true that reports generated by investigative bodies, including the Postal Inspection Service, are considered confidential information if they are is so labeled by the investigative body, and may not be released without the consent of the furnishing agency, primarily because the information is considered the property of the other agency. However, in recent years, the Office of Workers' Compensation Programs (OWCP) has informed Federal agencies of its position that any evidence, including investigative materials, that they want OWCP to use in arriving at a decision on a claim becomes part of the case record and therefore becomes discloseable by OWCP. If any agency still submits materials labeled confidential, Chapter 2-300, section 7-d, of the FECA Procedure Manual applies and the information is kept separated from the case file; however such material is not considered in OWCP's decision.

A free copy of the FECA Procedure Manual index has been provided to your National Office in Washington, D.C. Additional copies may be purchased for $7.00. Enclosed, you will find the copies of the three Employees' Compensation Appeals Board Decisions you requested.

I trust you find the above responsive to your concerns.

Sincerely,

Thomas M. Markey
Director, Federal
Employees' Compensation

Enclosures

CALIFORNIA
AMERICAN POSTAL WORKERS UNION
AFL-CIO
3120 University Avenue • San Diego, CA 92104 • Phone (619) 282-6863

William P. Sims
President

Kenneth G. Floyd
Vice President

November 20, 1992

FREEDOM OF INFORMATION ACT REQUEST

Tom Markey
Director FEC
Office of Worker's Compensation Programs
200 Constitution Avenue, NW
Washington, DC 20210

Dear Mr. Markey,

I am requesting answers to the below listed questions. Presently, I have a case at Hearing and Review. I need the answers in order to determine appropriate action on the case.

1. Are there annotation(s), code(s) or any identifying marks entered into the computerized Federal Employee Compensation System (FECS) that denote materials such as video tapes or investigative memorandums or other reports or materials that may pertain to the case file but not be maintained in the hard copy case file?

2. Are such annotations, codes or other identifying marks also placed in or on the hard copy case file, jacket or CA-800?

3. If there are such annotations, codes or other identifying marks placed in the FECS or in or on the hard copy case file, are they uniform office wide or do they change from district office to district office?

4. Under section 2-300, 7-d of the FECA Procedure Manual, does the office consider reports generated by the U.S. Postal Inspection Service to be "confidential information as described by the Privacy Act?" This includes all reports known as investigative memorandums or by any other name.

5. If the answer to question 4 is no, would such Postal Inspection Reports fall under FECA procedure manual, paragraph 2-300, 7-c?

Under the Freedom of Information Act I request a copy of the FECA Procedure Manual index. Also, please provide a copy of the below listed ECAB decisions:

Edward T. Lowery	8 ECAB 745	
Virgil Hilton	DKT 85-147	8-4-86
Virgil Hilton	DKT 85-1971	8-26-86

Thank you for your cooperation in this matter.

Sincerely,

William P. Sims, Jr.
President

WPS/dd

cc: file

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

March 23, 1977

MEMORANDUM TO: Regional Directors,
Employee and Labor Relations
(All Regions)

SUBJECT: Article XIII - Permanent Reassignment of Ill or Injured Regular Work Force Employees

The Postal Service has reexamined its position concerning the meaning of Article XIII, B.2.A pertaining to who shall bear the cost of the physical examination referred to therein when the employee requesting permanent reassignment to light duty or other assignment is directed to be examined and certified by a physician of the installation head's choice. The Postal Service will, henceforth, pay the designated physician's bill for such physical examination. However, the right is reserved to the installation head to determine when such examinations are appropriate and necessary and every employee request shall not automatically trigger the examination process at Postal Service expense.

The policy stated herein shall be applied to pending grievances which have not been previously settled or extinguished by failure to meet procedural or timeliness requirements of the National Agreement.

James C. Gildea
Assistant Postmaster General
Labor Relations Department

cc: Gen'l. Mgrs., Labor Relations
(All Regions)

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

April 28, 1999

Mr. William Burrus
Executive Vice President
American Postal Workers Union, AFL-CIO
1300 L Street NW
Washington DC 20005

Dear Bill:

This is in response to your March 17 letter regarding whether a medical restriction from working overtime requires an employee to request light duty under the provisions of Article 13.

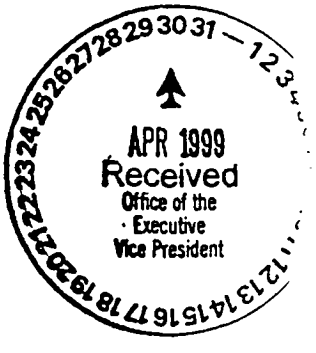
The question of whether the inability to work overtime constitutes light duty was addressed in some detail by Arbitrator Snow in case H1C-5K-C 24191. I refer you to that arbitration award for a complete discussion on the subject. However, the most relevant portion of the award reads as follows:

> 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.

If you have any further questions, please contact Dan Magazu at (202) 268-3825.

Sincerely,

Peter A. Sgro
Acting Manager
Contract Administration (APWU/NPMHU)



475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

March 17, 1999

Dear Mr. Sgro:

Article 13 of the National Agreement provides that "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." This employee option is being interpreted as being applicable when an employee is capable of performing his or her normal work assignment, but is medially restricted to the normal 8 hour work day.

The union interprets the agreement that an inability to work overtime does not necessarily prohibit an employee from performing his or her normal assignment and an individual working with such restriction is not required to request light duty. Employees restricted from working overtime may bid on and receive assignments for which they can perform a regular eight-hour assignment.

Please respond as to the employer's interpretation regarding the above.

Sincerely,

William Burrus
Executive Vice President

Mr. Peter Sgro
Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

June 18, 1996

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

Recently, you and Frank Jacquette, of my staff, had conversation regarding application of the September 21, 1987, Memorandum of Understanding (MOU) on the bidding rights of employees on light or limited duty. You indicated that you have been made aware of situations where required medical documentation was not being obtained and given consideration prior to the awarding of bids. We agree that the following clarifies the intent of the parties as to the application of that section of the MOU which addresses medical documentation.

Temporarily disabled employees who submit bids subject to the September 1, 1987, Memorandum and who are declared the senior bidder and are required to provide the initial medical documentation, will not be awarded the assignment in question until the requested medical documentation has been provided. If the employee fails to provide the requested initial medical documentation, he/she shall remain in their current assignment and the next senior bidder shall be declared the senior bidder. If the temporarily disabled employee submits the required medical documentation, is awarded the assignment, but fails to recover within the six month period or the extended six month period, the employee shall become an unassigned regular and the assignment will be reposted for bid. Under such circumstances, the employee shall not be eligible to re-bid the next posting of that assignment.

Sincerely,

Anthony J. Vegliante
Manager
Contract Administration APWU/NPMHU

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

NATIONAL ARBITRATION PANEL

In the Matter of Arbitration between AMERICAN POSTAL WORKERS UNION and UNITED STATES POSTAL SERVICE	GRIEVANT: C. Hernandez POST OFFICE: Phoenix, AZ CASE NO. H1C-5K-C 24191

BEFORE: Professor Carlton J. Snow

APPEARANCES: Mr. Martin I. Rothbaum

Mr. C. J. "Cliff" Guffey

PLACE OF HEARING: Washington, D.C.

DATE OF HEARING: December 11, 1990

POST-HEARING BRIEFS: March 4, 1991

history . . . ." (See, 120 Cong. Rec. 30531, 30534 (Sept. 10, 1974). In other words, the definition of a disability under ADA extends to an individual who had an impairment in his or her life and who, then, recovered from the disability. The new legislation prohibits discrimination against such individuals.

The Americans with Disabilities Act also covers individuals who are "regarded" as having an impairment. In other words, even if an individual has a physical impairment that does not substantially limit a significant life activity, but the person has been treated by the employer as though the person had such a limitation, that person is protected by the legislation. (See, 45 C.F.R. § 84.3(j)(2)(iv) (1989)). That is, the new legislation prohibits discrimination against a person who has been treated by the employer as though the individual were impaired. (See, School Board of Nassau County v. Arline, 480 U.S. 273 (1987)).

It is important to recognize that an impairment under the ADA must not be of any particular duration. In other words, a person with a temporary impairment would be covered by the legislation. One need only establish an impairment that substantially limits a major life activity. It would be possible to establish coverage under the legislation without regard to the duration of the impairment.

If a worker is a qualified individual with a disability, management has an obligation to make a reasonable accommodation for that person. The legislation states that the

employer commits discrimination by

> not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation or business of such covered entity. (See, ADA § 102(b)(5)(A), 104 Stat. 332).

Section 101(9) of the legislation defines "reasonable accommodation" to include job restructuring as well as modifying work schedules. It is clear from the legislative history for the Act that the intent of the drafters was for management to make a determination about a specific accommodation on the basis of particular facts for individual cases. (See, Senate Rep. 116, 101 1st Cong., 1st Sess. 26, 31 (1989)). Legislators expected that management would be flexible with regard to job restructuring and modifying schedules. (See, Sen. Rep. 31). Legislators were clear about the fact that, even if the job restructuring or modified schedule reduced efficiency of an operation, it must be made, unless the inefficiencies could be defined as an "undue hardship" in specific cases.

The point is that the Employer has an obligation to look to laws such as the Americans with Disabilities Act for general guidance about the nature of the Employer's obligation to provide reasonable accommodation for individuals who are impaired. The Employer's obligation extends to all employment decisions. Decisions must be made on a case-by-case basis looking at the facts of each specific problem. The legislation suggests that the Employer must use a problem

solving approach to the matter. This means management must identify aspects of the job that limit the person's performance; determine potential accommodations; evaluate the reasonableness of the alternative accommodations in terms of their impact on the employer; and, assuming no undue hardship on the employer, implement the most effective accommodation. (See, e.g., Davis v. Frank, 711 Fed. Supp. 447 (N.D. Ill. 1989)).

Management's authority to assign overtime work must be understood within the context of laws such as the Americans with Disabilities Act. The Employer's authority to order overtime is not unfettered, and such overtime assignments cannot be viewed as an implied part of every job description. Management's right to require overtime of employes must be understood not only within the context of the parties' contractual agreement but also as informed by relevant legislation. Those sources make clear that the right of management to require overtime does not translate into an implied or inherent qualification for every postal position.

AWARD:

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Employer violated Article 37 of the National Agreement when, on approximately March 28, 1984, management denied the grievant a bid assignment due to her inability to work overtime. Because the grievant was the senior bidder for the open position and met all published qualification standards, she should have been awarded the position. An inability to work overtime does not necessarily prohibit an employe from performing his or her normal assignment. Accordingly, such an individual working with such a restriction is not necessarily on "light duty." Employes restricted from working overtime may bid on and receive assignments for which they can perform a regular eight hour assignment. The parties did not intend the 1987 Memorandum of Understanding to control individuals who are unable to work overtime but have no other medical restrictions.

The parties shall have sixty days from the date of this report to negotiate a remedy for the specific grievant involved in the case. If they are unable to accomplish this objective, they, by mutual agreement, may activate the arbitrator's jurisdiction any time during the ninety days period following the date of this report or by the request of either party after sixty days have passed from the date of this report but expiring ninety days after the date of this report. Further evidentiary hearings might be necessary

in order for the arbitrator to fashion an appropriate remedy. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 29, 1991

UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260

Mr. Cliff J. Guffey
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: H0C-3W-C 10914
Class Action
Mid Florida FL 32799

Dear Mr. Guffey:

On February 25, 1993, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management violated the National Agreement by requiring injured employees to sign a "Notice to Injured Worker; Limited Duty Assignment Policy."

During our discussion, we mutually agreed that employees will not be required to sign a notice such as the one referenced in this grievance.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to remand this case to the parties at Step 3 for application of the above understanding.

Time limits were extended by mutual consent.

Sincerely,

David P. Magazzo

Daniel P. Magazzo
Grievance and Arbitration
Labor Relations

C J Guffey

Cliff J. Guffey
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

Date: 4-7-93

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

August 14, 1987

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

Dear Mr. Burrus:

Enclosed is a Memorandum of Understanding that relates to temporarily physically disqualified employees.

Both parties agreed that this memorandum in no way prejudices the position of either party on any dispute as to accomodation of qualified handicapped employees.

Sincerely,

George S. McDougald

George S. McDougald
General Manager
Grievance and Arbitration
Division

Enclosure

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE AMERICAN POSTAL WORKERS UNION, AFL-CIO
AND
THE UNITED STATES POSTAL SERVICE

It is agreed that the following procedures will be used in situations in which an employee, as a result of illness or injury or pregnancy, is temporarily unable to work all of the duties of his or her normal assignment. Instead, such an employee is working on:

1) light duty,
2) or limited duty;

Or is receiving:

1) Continuation of Pay (COP)
2) or compensation as a result of being injured on the job
3) sick leave
4) annual leave in lieu of sick leave
5) 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 preferred bid assignment in accordance with the provisions in the various craft articles of the Agreement, or where applicable, in accordance with the provisions of a local Memorandum of Understanding, provided that the employee will be able to fully 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 fully 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, the employee shall become an unassigned regular and the bid will be reposted. 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 fully 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 fully 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 employee shall become an unassigned regular and the bid will be reposted. Under such circumstances, the employee shall not be eligible to re-bid 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 fully perform the duties of the bid-for position, the employee must relinquish the assignment, and would then become an unassigned regular and not be eligible to re-bid the next posting of that assignment.

E) It is still incumbent upon the employee to follow procedures in the appropriate craft articles to request notices to be sent to a specific location when absent. All other provisions relevant to the bidding process will also apply.

F) If the bid is to an assignment that has other duties or requirements more physically restrictive or demanding than the employee's current assignment which, at the time of bidding, the employee cannot perform as a result of temporary physical restrictions, the employee's bid will not be accepted.

G) If the employee is designated the senior bidder for an assignment which requires a deferment period, the employee must be physically capable of entering the deferment period at the time of the bid and completing it within the time limits set forth in the applicable provisions of the National Agreement. Further, if the employee qualifies during the deferment period the employee must be capable of immediately assuming the duties of the assignment in accordance with all the provisions set forth in this Memorandum of Understanding. In accordance with this provision, if the assignment requires the demonstration of a skill(s), the employee must be able to demonstrate the skill(s) on the closing date of the posting.

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.

Sincerely,

George S. McDougald
General Manager
Grievance and Arbitration Division
Labor Relations Department
United States Postal Service

William Burrus
Executive Vice President
American Postal Workers Union, AFL-CIO

9-1-87
DATE

American Postal Workers Union, AFL-CIO
1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

September 21, 1987

TO: Resident Craft Officers and Business Agents

SUBJECT: Memorandum of Understanding
(Physically Handicapped Employees)

I am enclosing a copy of the recently signed agreement permitting light and limited duty employees as well as employees on maternity leave or other medical leave to bid for vacant assignments. The basic protections of the agreement are as follows:

1) The agreement does not waive or resolve the question of the USPS' obligation to modify assignments to accommodate qualified handicapped employees. Employees who will not recover from medical disabilities should not be denied the opportunity to bid and be awarded an assignment. Appeals from denial of such rights should be processed under Article 2 or through EEO.

2) Employees bidding are not required to submit medical certification unless specifically requested by management and such request may be made once at the time of the bid or during the initial 6 months and once during the second 6 months.

3) Employees declared senior bidder and meet any prerequisite skills required will be declared the successful bidder and placed in the new assignment even though the employee's medical condition may prevent physical placement into the duties of the new assignment. In such circumstances the employee will continue on light or limited duty, or on leave pending recovery; either way the employee will be awarded the new assignment provided that a medical statement has been provided, if requested.

4) This agreement does not protect the right to bid to a position that requires physical activity more

demanding than the specific duties of the current position that the employee cannot perform due to medical restrictions. Only those duties of the current assignment that are directly related to the medical limitations can be used for consideration of "more physical restrictive or demanding."

5) If the assignment requires a deferment period the employee must train and qualify within the required time frame and must submit medical documentation as requested within the first and/or second 6 month period.

6) Employees designated successful bidder to higher level positions will continue to receive the former rate of pay until they begin performing the higher level duties. Once an employee begins receiving the higher level pay, all subsequent leave is paid at the higher level.

Yours in union solidarity,

William Burrus
Executive Vice President

WB:rb
opeiu#2
afl-cio

Enclosures

MAR 28 1988

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4107

Dear Mr. Burrus:

This is in response to your letter of March 15 regarding an Equal Employment Opportunity Commission ruling on partially handicapped employees and their placement in the proper level and step they would have attained had they not had an on-the-job injury.

It is my understanding that the Office of Personnel Management has issued a revision to 5 CFR, Part 353, which concerns restoration rights of employees injured on the job which was effective February 16. Furthermore, the revision only affects those employees who return to employment on or after February 16.

As a result of the OPM revisions, the U.S. Postal Service issued directives to the field advising them of the changes to the law (copy attached). The issue of placement into the proper level and step is appropriately addressed in the directive.

As noted in the directive, subsequent changes will be made to the Employee and Labor Relations Manual, Chapter 546.142, reflecting those revisions in the near future.

Should you have any further questions regarding the foregoing, please contact Harvey White at 268-3831.

Sincerely,

(signed) Joseph J. Mahon, Jr.

Joseph J. Mahon, Jr.
Assistant Postmaster General

Attachment

American Postal Workers Union, AFL-CIO
1300 L Street, NW, Washington, DC 20005

March 15, 1988

William Burrus
Executive Vice President
(202) 842-4246

Dear Mr. Mahon:

The Equal Employment Opportunity Commission has ruled in Case No. 101-84-X-0020 (Agency No. 5-1-0691-3) that partially handicapped employees returning to duty are entitled to placement in the step and level they would have obtained, but for the on-the-job injury.

This communication is to inquire as to the Postal Service's intent to amend its regulations on this subject to conform with the Decision and to adjust the pay of similarly situated employees who have not presently reached the top step and are being compensated at a salary below that which is required by law.

Please advise as to the intent of the Postal Service.

Sincerely,

William Burrus
Executive Vice President

Joseph Mahon
Asst. Postmaster General
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

WB:rb

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

Robert H. Jorgensen,
Appellant,

v.

United States Postal Service,
Agency.

Appeal No. 01852973
Agency No. 5-1-0691-3
Hearing No. 101-84-X-0020

DECISION

INTRODUCTION

On July 30, 1985, Robert H. Jorgensen (hereinafter referred to as appellant) initiated an appeal to the Equal Employment Opportunity Commission from the final decision of the United States Postal Service (hereinafter referred to as the agency) issued July 10, 1985 concerning appellant's equal opportunity complaint based on physical handicap (back injury) in violation of Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §791.[1] The appeal is accepted by this Commission in accordance with the provisions of EEOC Order No. 960, as amended.

[1]Appellant initially raised this allegation before the Merit Systems Protection Board (MSPB). In Robert Jorgensen v. U.S. Postal Service, MSPB No. SE03538110038 (October 26, 1981) the Board found that it did not have jurisdiction over appellant's allegations. The Board further commented that while the agency fulfilled its obligation to restore appellant, his claim did not address the issue of restoration, per se. In his appeal to the MSPB, appellant contended that he was entitled to a higher salary and that he was better suited to a letter carrier position. On October 25, 1982 the Commission denied consideration of a petition for review of the MSPB decision. However, the Commission noted, in part, that appellant was not foreclosed from raising the allegation in a complaint of discrimination under 29 C.F.R. §1613.201 et seq. See Robert Jorgensen v. U.S. Postal Service, EEOC Petition No. 03820029 (October 25, 1982).

ISSUES PRESENTED

Whether appellant, an injured Distribution Clerk who received compensation benefits for more than one year, was a "qualified handicapped person" when he was reemployed by the agency in a modified Distribution Clerk position which accommodated the lingering effects of his on-the-job injury.

Whether appellant was entitled to be reinstated at the step level he would have attained in the absence of his on-the-job injury.

BACKGROUND

In December 1975, appellant, a Distribution Clerk with the agency, sustained an on-the-job injury to his lower back. As a result of the injury, on May 20, 1976 appellant was awarded compensation by the Office of Workers' Compensation Programs (OWCP), Department of Labor, and was placed on Leave Without Pay (LWOP) status by the agency. Agency records reflect that on September 28, 1977 appellant was awarded disability retirement and separated from the agency. At the hearing before the Complaints Examiner, appellant testified that he was required to apply for disability retirement. However, appellant elected to stay on the OWCP rolls. (Tr. 62).[2]

In 1980 the OWCP referred appellant to the agency for possible reemployment. In October 1980 an agency medical officer examined appellant and pronounced appellant capable of returning to work with several specific restrictions designed to avoid further back injuries. An October 30, 1980 job offer was later withdrawn by the agency. However, on March 5, 1981 the agency reissued its job offer for a Distribution Clerk position, modified to fit appellant's work restrictions. Appellant's duties were divided between two stations and included timekeeping duties. Although appellant accepted the offer, he contended that the agency discriminated against him based on his physical handicap in that the agency refused to reinstate appellant at the step level he would have held but for the on-the-job injury.

Following investigation and issuance of a notice of proposed disposition, appellant requested a hearing before a Complaints Examiner. In a January 24, 1985 prehearing statement the agency noted that the Postal Service ultimately pays the OWCP benefits or retirement benefits of partially-recovered employees. Thus, it is in the best interest of the Postal Service to return partially recovered employees to work even if they may be working at considerably less than 100% efficiency.

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[2] See generally Federal Personnel Manual Supplement 831-1, Subchapter S7 (Election Between Retirement Annuity and Compensation for Work Injuries).

At the April 10, 1985 hearing, the agency stipulated that if appellant had returned to work fully-recovered after being off work for more than one year, appellant would have been given credit for the intervening period -- i.e.,[3] appellant would have been reinstated at a higher step level. (Tr. 8-9). An Injury Compensation Specialist testified that appellant performed the duties set forth in the job description which was designed to accommodate his physical restrictions. However, the Specialist testified that appellant did not perform the duties of a "regular Distribution Clerk." (Tr. 29). An MSC Safety Specialist testified that appellant performed timekeeping duties approximately six hours per day and clerk duties in the Box Section for approximately two hours. (Tr. 51). In the opinion of the Specialist, appellant's medical restrictions would not limit the performance of the timekeeping duties.[4] (Tr. 50). Appellant's supervisor in the Box Section testified that appellant was unable to perform several duties of a Box Section clerk. The supervisor recalled that appellant was unable to perform "all the extemporaneous duties which made up that job, other than boxing mail." (Tr. 81).

At the hearing, the agency contended that although appellant was "handicapped" he was not a "qualified handicapped person" in that appellant was unable to perform the essential functions of a regular Distribution Clerk. See EEOC Regulation 29 C.F.R. §1613.702(f). Thus, in the opinion of the agency, appellant was not entitled to the protection of the Rehabilitation Act.[5] The agency further contended that its regulations, which distinguished between fully recovered employees and partially recovered employees with respect to the step level to which an employee is reinstated, are consistent with the

---

[3] See also agency's Prehearing Statement dated January 24, 1985. The agency stated in part: "If [appellant] had been rehired as a fully recovered employee he would have been given credit for the intervening period, and thus would have had a higher in-grade step level."

[4] The Complaints Examiner excluded testimony concerning appellant's physical condition subsequent to March 1981. (Tr. 23-24). However, the record reflects that beginning in June 1981, appellant complained of back pain. In August 1981, appellant's duties were changed to eight hours per day of desk work. A fitness-for-duty examination performed in January 1982 disclosed that appellant was physically able to perform the duties assigned to him. A subsequent claim by appellant for compensation was rejected by OWCP in December 1982.

[5] See Employee and Labor Relations Manual, Subchapter 540, Injury Compensation Program. Sections 546.41 and 546.42 ("OPM Regulations" and "Rights and Benefits upon Partial Recovery") EEO Investigative Report, Exhibit #21c.

requirements of 5 U.S.C. §8151.[6] Specifically, the agency relied on the Office of Personnel Management's March 6, 1979 answer to a question posed by the agency:[7]

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[6]Chapter 81-Compensation for Work Injuries

5 U.S.C. §8151. Civil service retention rights

(a) In the event the individual resumes employment with the Federal Government the entire time during which the employee was receiving compensation under this chapter shall be credited to the employee for the purposes of within-grade step increases, retention purposes, and other rights and benefits based upon length of service.

(b) Under regulations issued by the Office of Personnel Management-

(1) the department or agency which was the last employer shall immediately and unconditionally accord the employee, if the injury or disability has been overcome within one year after the date of commencement of compensation or from the time compensable disability recurs if the recurrence begins after the injured employee resumes regular full-time employment with the United States, the right to resume his former or an equivalent position, as well as all other attendant rights which the employee would have had, or acquired, in his former position had he not been injured or disabled, including the rights to tenure, promotion, and safeguards in reductions-in-force procedures, and

(2) the department or agency which was the last employer shall, if the injury or disability is overcome within a period of more than one year after the date of commencement of compensation, make all reasonable efforts to place, and accord priority to placing, the employee in his former or equivalent position within such department or agency, or within any other department or agency.

[7]The Office of Personnel Management, successor to the Civil Service Commission, was assigned the duty to promulgate rules and regulations implementing 5 U.S.C. §8151.

Question 7:

> When a partially injured former employee is restored more than one year after the commencement of compensation benefits, must that employee be placed in the pay grade and step that he would have attained without injury, or is it sufficient to restore the employee to the pay grade and step that he had when he was injured where the pay for that grade and level exceeds what it was at the time of the injury?

Although the agency's question was posed in the alternative, OPM provided the following response:

Answer 7:

> No. The employee may be restored to any position--even one at a lower pay and grade than the one he or she left. However, if and when the employee fully recovers, he or she is entitled to be considered for the position originally held or an equivalent one as prescribed by [5 C.F.R.] Part 353.

The record reflects that in 1980 the Office of Workers' Compensation Programs in the Department of Labor issued a revised edition of a pamphlet entitled Federal Injury Compensation: Questions and Answers About the Federal Employees' Compensation Act. While the agency contends that OWCP's answers to Questions 72 and 73 are relevant, the Commission notes that OWCP's answer to Question 77 is directly on point.[8]

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[8]Federal Injury Compensation: Questions and Answers About the Federal Employees' Compensation Act, U.S. Department of Labor, Employment Standards Administration, Office of Workers' Compensation Programs, Pamphlet CA-550 (Rev. Feb. 1980):

72. If, as a result of an on-the-job injury, an employee returns to work at a lower rate of pay, is he or she entitled to compensation?

> Yes. The employee may receive compensation for the loss of earning capacity resulting from the injury. The compensation rate is two-thirds of the loss of earning capacity if there are no dependents; or three-fourths of the loss if the employee has one or more dependents.

73. How is the wage-earning capacity of a partially disabled employee determined?

(Footnote Continued)

In his Recommended Decision, the Complaints Examiner rejected the agency's argument that appellant was not a "qualified" handicapped employee entitled to the protections of the Rehabilitation Act and applicable EEOC Regulations. Since 75% of appellant's time was devoted to timekeeping duties which appellant was fully able to perform, the Complaints Examiner concluded that appellant was able to perform the essential functions of his position. Assuming, arguendo, that the Box Section clerk position was appellant's "position in question," the Complaints Examiner found that appellant could perform the essential function of a Box Section clerk -- that is, appellant could box mail. Since appellant could perform the essential functions of his position, the Complaints Examiner found that appellant was a "qualified handicapped person" within the meaning of the Rehabilitation Act and applicable regulations.

The Complaints Examiner examined appellant's complaint of handicap discrimination under a disparate treatment analysis. Since it was not disputed

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(Footnote Continued)

> The employee's actual earnings, if any, are studied to see if they fairly and reasonably represent the individual's wage-earning capacity. If they do not, or if the employee has no actual earnings, the OWCP must determine such earning capacity taking into consideration the nature of the injury, the degree of physical impairment, the employee's age, employment qualifications, the availability of suitable employment, and any other factors or circumstances in the employee's case which may affect the capacity to earn wages in his or her disabled condition.

77. Does an injured employee have Civil Service retention rights when injured on the job?

> Yes. The provisions of 5 U.S.C. 8151, administered by the Office of Personnel Management, assure Federal employees, including those of the U.S. Postal Service, who are injured on the job and who have received, or are receiving compensation, that upon their return to Federal employment they will incur no loss of benefits which they would have received but for the injury (or disease). It also permits an injured employee to return to his/her former or equivalent position if recovery occurs within 1 year from the date compensation begins or 1 year from recurrence of that same injury. For those employees whose disability extends beyond 1 year, the employing agency or department is to grant priority in employment to the injured worker, provided application for reappointment is made within 30 days of the date of cessation of compensation.

that partially recovered injured employees were treated differently from fully recovered injured employees with regard to step increases, the Complaints Examiner focussed on the agency's justification for its action. The agency contended that 5 U.S.C. §8151 permitted the disparate treatment in that partially recovered injured employees worked at less than 100 percent efficiency. In considering whether the agency correctly interpreted 5 U.S.C. §8151, the Complaints Examiner considered OPM's March 6, 1979 response to Question 3 posed by the agency. At Question 3 the agency inquired whether 5 U.S.C. §8151(a) applied to "a former employee whose disability is partially overcome more than one year after the commencement of compensation, and who is restored to duty by the employing agency?" OPM responded that "Section 8151(a) provides that an employee who resumes employment with the Federal Government is to be credited with the time during which compensation was received for purposes of rights and benefits based upon length of service. This section applies if the individual is reemployed regardless of whether the employee is fully recovered or partially recovered." (emphasis added).[9]

The agency further relied on a decision by an Arbitrator in U.S. Postal Service v. American Postal Service Union, Grievance Nos. H8C-4A-C-11834, 11772 and 11832 (September 3, 1982) and a dismissal by the MSPB, James Blackburn v. U.S. Postal Service, MSPB No. SF035381104476 (July 30, 1982) (dismissal for lack of jurisdiction). Finally, the agency argued that step increases are not automatic but are based on merit.

In view of the language in 5 U.S.C. §8151(a) to the effect that the entire time during which the employee received workers' compensation benefits shall be credited to the employee for the purpose of within-grade step increases and the OPM's March 6, 1979 interpretation of §8151(a) as applying to partially recovered employees as well as fully recovered employees, the Complaints Examiner recommended a finding that agency regulations which denied step increases to partially recovered employees were in conflict with 5 U.S.C. §8151(a). The Complaints Examiner further recommended a finding that the agency's denial of within-grade step increases for partially recovered employees constituted disparate treatment of a subclass of handicapped persons to which appellant belonged.[10]

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[9] See also September 8, 1987 letter from the Acting Assistant Director for Staffing Policy and Operations, Office of Personnel Management to Director, Office of Safety and Health, United States Postal Service (no basis under 5 U.S.C. §8151 and implementing OPM regulations for denying partially recovered employees within-grade increases).

[10] Relying on EEOC Regulation 29 C.F.R. §1613.604(i) the Complaints Examiner erroneously stated that the Recommended Decision would become a final decision

(Footnote Continued)

The final decision of the agency rejected the Complaints Examiner's recommended finding that appellant was a "qualified handicapped person." Relying on Jasany v. U.S. Postal Service, 755 F.2d 1244 (6th Cir. 1985), the agency stated that reasonable accommodation does not include the elimination of essential functions of a position. Since appellant was unable to perform the normal duties or essential functions of a regular Distribution Clerk, the agency concluded that appellant was not a "qualified handicapped person" as that term is defined in EEOC Regulation 29 C.F.R. §1613.702(f). In the agency's opinion the Complaints Examiner's recommended finding that the appellant could perform the essential functions of a Time and Attendance Clerk position ignored the fact that appellant was reemployed as a Distribution Clerk. Assuming, arguendo, that appellant was a qualified handicapped person, the agency found that the differing treatment accorded fully-recovered employees and partially-recovered employees in terms of within-grade step increases was consistent with 5 U.S.C. §8151. Accordingly, the agency rejected the recommendation of the Complaints Examiner and found that appellant had not been discriminated against based on physical handicap in violation of the Rehabilitation Act.

ANALYSIS AND FINDINGS

The first issue to be addressed is whether appellant is entitled to the protections of the Rehabilitation Act. It is not disputed that appellant is a "handicapped person" as that term is defined in EEOC Regulation 29 C.F.R. §1613.702(a). However, relying on Jasany v. U.S. Postal Service, 755 F.2d 1244 (6th Cir., 1985), the agency contends that appellant is not a "qualified handicapped person" in that, with or without accommodation, appellant cannot perform the essential functions of a regular Distribution Clerk position without endangering his health and safety. In Jasany, the plaintiff was hired primarily to operate the LSM-ZMT machine. Because of a mild case of strabismus, the plaintiff was unable to operate the machine. The Court held that the "post office was not required to accommodate Jasany by eliminating one of the essential functions of his job." Jasany, supra at 1250 (emphasis in original).

The holding of Jasany, supra, is consistent with EEOC Regulation 29 C.F.R. §1613.704(b) in that the "job restructuring" permitted by the regulation does not require the elimination of essential functions of the employee's position. However, Jasany and EEOC Regulation 29 C.F.R. §1613.704(b) are of limited applicability in the instant case in light of the agency's voluntary restructuring of appellant's position.

(Footnote Continued)
calendar days. However, EEOC Regulation 29 C.F.R. §1613.604(i) is only applicable to class action complaints. Pursuant to EEOC Regulation 29 C.F.R. §1613.220(d), the agency had 30 calendar days from date of receipt to reject or modify the Recommended Decision of the Complaints Examiner.

Here, the agency's voluntary offer of reemployment recognized appellant's physical restrictions. Further, the agency agreed to assign duties to appellant which were within his physical limitations. At the hearing, witnesses testified that appellant spent about six hours a day on timekeeping duties. Said duties were within appellant's physical limitations. Appellant was assigned to the Box Section for approximately two hours a day. While he was unable to perform some duties, he was able to box mail, a principal function of the Box Section. While appellant's physical restrictions prevented him from performing all of the the essential functions of a regular Distribution Clerk, the agency's voluntary offer of reemployment modified the duties of a Distribution Clerk position so as to accommodate appellant's physical restrictions. Evidence that appellant's job title was "Distribution Clerk" and that appellant was unable to perform the regular duties of a Distribution Clerk does not remove appellant from the protections of the Rehabilitation Act. In view of the agency's voluntary commitment to assign duties to appellant which were within his physical restrictions as well as appellant's performance of the essential functions of his timekeeping duties and his ability to box mail, the Commission finds that appellant is a "qualified handicapped person" entitled to the protection of the Rehabilitation Act.

In the context of injured employees returning to work more than one year after commencement of compensation, it is not disputed that the agency treats fully-recovered employees more favorably than partially-recovered employees.[11] Thus, the Commission finds that appellant has established a prima facie case of disparate treatment based on physical handicap. Prewitt v. U.S. Postal Service, 662 F.2d 292, 305, n. 19 (5th Cir. 1981). The agency contends that 5 U.S.C. §8151(a), as interpreted by the Office of Personnel Management, authorizes this disparate treatment. Thus, the next issue to be addressed is essentially an issue of law -- namely, whether 5 U.S.C. §8151(a) authorizes the disparate treatment of partially recovered injured employees, thereby limiting the scope of the Rehabilitation Act.

The Federal Employees Compensation Act (FECA), as amended, 5 U.S.C. §8151, sets forth the retention rights of injured or disabled employees of certain Federal government departments and agencies, including the United States Postal Service.[12] The statute provides, in relevant part, that in "the event the

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[11]The agency stipulated that, had appellant returned to work fully-recovered after being off work for over a year, appellant would have received the step increases for the period he was receiving compensation.

[12]The legislative history of FECA reflects that 5 U.S.C. §8151 was added to the Act in 1974. In Senate Report No. 93-1081, the Labor and Public Welfare Committee stated that the amendment made by Section 22 (§8151) assured "injured employees who are able to return to work at some later date that, during their

(Footnote Continued)

individual resumes employment with the Federal Government, the entire time during which the employee was receiving compensation under this chapter shall be credited to the employee for the purposes of within-grade step increases...." (emphasis added). By letter dated March 6, 1979, OPM advised the agency that 5 U.S.C. §8151(a) applied to a former employee whose disability is partially overcome more than one year after the commencement of compensation benefits.

The agency relies on OPM's opinion that a partially recovered employee, who is restored more than one year after the commencement of compensation benefits, "may be restored to any position -- even one at a lower pay and grade than the one he or she left." However, OPM's opinion that a partially recovered employee may be restored to any position, even one that is at a lower pay and grade, is not applicable to the instant case. The record reflects that appellant was restored to the position he previously held, namely, Distribution Clerk, albeit the duties were modified to accommodate appellant's handicap.

Similarly, the agency argues that its interpretation of 5 U.S.C. §8151(a) is consistent with the interpretation given by the Office of Workers' Compensation Programs of the Department of Labor. In a pamphlet entitled "Federal Injury Compensation," OWCP answered questions about FECA. Specifically, the agency relies on OWCP's answers to Questions 72 and 73. The agency appears to argue that since it is theoretically possible to rehire an injured employee at a lower rate of pay, then 5 U.S.C. §8151(a) cannot be interpreted as requiring that a partially-recovered employee be given credit for time on compensation for the purpose of within-grade step increases. However, the Commission notes that OWCP's response to Question 77 is not in conflict with OPM's statement that 5 U.S.C. §8151(a) is applicable to partially recovered employees. OWCP explained that the provision assures Federal employees injured on-the-job that "upon their return to Federal employment they will incur no loss of benefits which they would have received but for the injury (or disease)."

In the agency's January 24, 1985 prehearing statement, the agency represented that the MSPB had determined the Postal Service's actions were in accordance with 5 U.S.C. §8151 and applicable regulations. The Commission notes that the Board's October 26, 1981 Decision found that the agency had fulfilled its obligation to restore appellant. The Board further noted that "[a]ppellant's claims do not go to the issue of restoration, per se, but to his apparent belief that he should have been restored to a wholly different position [Letter Carrier] at a different rate of pay from the one he had held. The Board does not have jurisdiction to consider this aspect of appellant's claim." (emphasis added). Thus, it is evident that the MSPB decision did not address appellant's

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(Footnote Continued)
period of disability, they will incur no loss of benefits that they would have received were they not injured." The Senate Report does not distinguish between fully-recovered employees and partially-recovered employees.

contention as to his within-grade step level. See Robert Jorgensen v. U.S. Postal Service, MSPB No. SE03538110038, October 26, 1981.[13]

In addition, the agency directs the Commission's attention to the decision of an Arbitrator in U.S. Postal Service v. American Postal Service Union, Grievance Nos. H8C-4A-C-11834, 11772 and 11832, dated September 3, 1982. The union claimed that the two grievants should have been reinstated at the salary levels they would have occupied had they not been injured on-the-job. However, the Arbitrator's decision focused on the union agreement. The Arbitrator noted that, pursuant to a provision of the union agreement, the union had the opportunity to challenge Postal Service regulations which denied step increases to partially recovered employees. However, in the opinion of the Arbitrator the union failed to challenge the regulation at the appropriate time. Accordingly, the Arbitrator denied the grievances. Since the focus of the Arbitrator was whether the agency had violated the union contract and whether the union had timely challenged the alleged violation, the Arbitrator's decision is of limited relevance to the instant case.

Finally, the agency argues that step increases are not automatic. Rather, they are based on merit. However, the agency concedes that had appellant returned as a fully recovered employee, appellant would have been given credit for step increases to which he would have been entitled but for the injury. Thus, in some instances employees are given credit for time on workers' compensation without regard to merit.

In view of the purpose of the legislation, OPM's interpretation of 5 U.S.C. §8151(a) as applying to partially recovered employees, and the specific reference in 5 U.S.C. §8151(a) to within-grade step increases, the Commission finds that the agency erred in interpreting 5 U.S.C. §8151(a) as permitting disparate treatment between partially recovered and fully recovered injured employees. In summary, 5 U.S.C. §8151 and the Rehabilitation Act are complementary. The minimum restoration rights and benefits due former civil servants who sustain on-the-job injuries are set forth in 5 U.S.C. §8151. The Rehabilitation Act provides, in part, that "handicapped" persons (including former federal employees who have partially recovered from on-the-job injuries) are not subjected to discrimination in the form of disparate treatment because of their handicaps.

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[13] Similarly, in James Blackburn v. U.S. Postal Service, MSPB No. SF03538110476, July 30, 1982, the Board on its own motion vacated an Initial Decision in favor of the appellant therein and dismissed the appeal for lack of jurisdiction. The Initial Decision in Blackburn had held that the appellant was entitled to be rehired at the step level he would have held in the absence of the injury.

Having given within-grade step increases to fully recovered injured employees who resume employment more than one year after commencement of compensation, the agency is required by §501 of the Rehabilitation Act, as amended, to give within-grade step increases to similarly situated partially recovered injured employees. Accordingly, the Commission finds that the agency violated the Rehabilitation Act by denying appellant, a qualified handicapped person, the within-grade step increases to which he would have been entitled had he fully recovered from his on-the-job injury. Accordingly, the final agency decision is REVERSED.

CONCLUSION

Based upon a review of the record, the decision of the Equal Employment Opportunity Commission is to reverse the agency's finding of no discrimination based on handicap and to enter a finding of discrimination based on handicap. In order to remedy its past discrimination against appellant, the agency shall comply with the directions of the following Order:

ORDER

A. Since the record establishes that appellant would have been rehired at a higher step level but for the discrimination herein, the agency is directed to immediately and retroactively amend personnel records to reflect that appellant was rehired on November 24, 1980 and March 31 1981 at the appropriate within-grade step level with backpay and all other benefits which would have accrued in the absence of discrimination. Backpay shall be computed in the same manner as prescribed by 5 C.F.R. §550.805.

B. The agency is directed to ensure that appellant and similarly situated handicapped employees are not subjected to discrimination in the future.

C. The agency is directed to post at its facility in Eugene, Oregon, copies of the attached notice. Copies of the notice, after being signed by the agency's duly authorized representative, shall be posted by the agency immediately upon receipt, and be maintained by it for 60 consecutive days, in conspicuous places, including all places where notices to employees and applicants for employment are customarily posted. The agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material.

IMPLEMENTATION OF THE COMMISSION DECISION

Under EEOC regulations, compliance with the Commission's corrective action is mandatory. The agency must report to the Commission, within thirty (30) calendar days of receipt of the decision, that corrective action has been taken. The agency's report should be forwarded to the Compliance Officer, Office of Review and Appeals, Equal Employment Opportunity Commission, 5203 Leesburg Pike, Falls Church, Virginia, 22041. A copy of the report should be sent to the appellant.

ATTORNEY'S FEES

If appellant has been represented by a member of the Bar, appellant shall be awarded attorney's fees under 29 C.F.R. §1613.271(c). The attorney shall submit to the agency within twenty (20) days of receipt of this decision, the documentation required by 29 C.F.R. §1613.271(c)(2). The agency shall process the claim within the time frames set forth in §1613.271(c)(2).

A statement of appellant's rights (R-1) is attached to this decision.

FOR THE COMMISSION:

January 20, 1988
Date

Executive Officer
Executive Secretariat

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
An Agency of the United States Government

This Notice is posted pursuant to an Order dated by the United States Equal Employment Opportunity Commission which found that a violation of Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §791 had occurred at this facility.

Federal law requires that there be no discrimination against any employee or applicant for employment because of the person's RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, AGE or PHYSICAL or MENTAL HANDICAP with respect to hiring, firing, promotion, compensation, or other terms, conditions or privileges of employment.

The United States Postal Service supports and will comply with such Federal law and will not take action against individuals because they have exercised their rights under law.

The United States Postal Service has retroactively amended its personnel records to reflect that the employee was rehired at the appropriate within-grade step level. The United States Postal Service will ensure that officials responsible for personnel decisions and terms and conditions of employment will abide by the requirements of all federal equal employment opportunity laws and will not treat partially recovered injured employees who are reemployed more than one year after the commencement of compensation less favorably than similarly situated fully recovered injured employees.

The United States Postal Service will not in any manner restrain, interfere, coerce, or retaliate against any individual who exercises his or her right to oppose practices made unlawful by, or who participates in proceedings pursuant to, Federal equal employment opportunity law.

Date Posted:_____

Posting Expires:_____

29 C.F.R. Part 1613

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: H4C-4G-C 24864
CLASS ACTION
SOUTH BEND IN 46624

Dear Mr. Burrus:

On April 21, 1992, Thomas E. Keefe, Jr., met with Cliff Guffey in a prearbitration discussion of the above-referenced case.

The matter presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

The USPS and the APWU agree that the following terms will settle the issue in dispute.

1. The Postal Service acknowledges its obligation under Article 14 of the National Agreement to provide safe working conditions in all present and future postal installations and to develop a safe working force. The union will cooperate with and assist management to live up to this responsibility.

2. The Postal Service also acknowledges its obligation under Article 23 of the National Agreement to allow, with reasonable notice, duly authorized representatives of the Union to enter postal installations for the purpose of performing and engaging in official Union duties and business related to the Collective Bargaining Agreement. Such representatives need not be on the employee's payroll and may include "safety and health experts." All such representatives must adhere to the terms and conditions of Article 23.

Please sign the attached copy of this letter acknowledging your agreement with the settlement, withdrawing H4C-4G-C 24864 from the pending arbitration list.

Sincerely,

William J. Downes
Director
Office of Contract
Administration

Date 4-27-92

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

Date 4-28-92

Enclosure

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 85-1226

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

HOLYOKE WATER POWER COMPANY,
Respondent,

LOCAL 455, INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, AFL-CIO,
Intervenor.

DECREE

Entered: November 27, 1985

This cause came on to be heard upon an application for enforcement of an order of the National Labor Relations Board, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The application for enforcement is granted and the order of the National Labor Relations Board is hereby affirmed and enforced.

By the Court:

Francis P. Scigliano
Clerk.

A True Copy
Attest:

Francis P. Scigliano
Clerk.

(Cert. ccs: N.L.R.B. and Ms. Dreeben, Messrs: Berger, Hall, Crowell and Gottesman;
cc: Mr. Fuchs, Regional Director)

United States Court of Appeals
For the First Circuit

No. 85-1226

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

HOLYOKE WATER POWER COMPANY,

Respondent.

LOCAL 455, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,

Intervenor.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Before

Coffin, Circuit Judge,

Aldrich, Senior Circuit Judge,

and Wisdom,* Senior Circuit Judge.

Linda Dreeben with whom Rosemary M. Collyer, General Counsel, John E. Higgins, Jr., Deputy General Counsel, Robert E. Allen, Associate General Counsel, and Elliott Moore, Deputy Associate General Counsel, were on brief for petitioner.

Jason Berger, P.C. with whom Peabody & Brown, was on brief for respondent.

James O. Hall for intervenor.

Donald R. Crowell, II, Linda E. Rosenzweig, Pepper, Hamilton & Scheetz, Stephen A. Bokat, Stephen A. Bokat and National Chamber Litigation Center, Inc. on brief for Chambers of Commerce of the United States, Amicus Curiae.

Michael H. Gottesman, Jeremiah A. Collins, David M. Silberman, Laurence Gold and Laurence Cohen on brief for American Federation of Labor and Congress of Industrial Organizations, Amicus Curiae.

November 27, 1985

* Of the Fifth Circuit, sitting by designation.

WISDOM, Senior Circuit Judge:

The issue in this case is whether an employer must allow a non-employee union representative into its plant to measure noise levels in a particularly noisy room. We conclude that the union's representative is entitled to access to the room.

I.

Holyoke Water Power Company operates the Mt. Tom power plant. One room of the plant contains two large fans that force air into the plant's burners. This "fan room" is extremely noisy. The company has posted a notice that hearing protection must be worn in the fan room, and provides ear protectors for that purpose. No one is stationed in the fan room, although employees must enter it to perform maintenance and repair work.

During 1981 and 1982, the Mt. Tom Plant began burning coal instead of oil. Prior to the conversion, the fans ran at full speed about sixty percent of the time. They now run at full speed about ninety-five percent of the time. The union, which represents the company's production and operations employees, sent an industrial hygienist into the plant to survey possible hazards created by the conversion to coal. The hygienist requested access to the fan room. When the company refused the request, the union filed an unfair labor practice charge. The Board ruled in favor of the Union. 273 N.L.R.B. No. 168 (Jan. 11, 1985). It now petitions for enforcement of the order.

II.

Prior to this case, the Board treated union requests for access to an employer's property to obtain health and safety information as simple requests for information. See Winona Industries, 257 N.L.R.B. 695 (1981). The Supreme Court has held that employers must "provide information that is needed by the bargaining representative for the proper performance of its

duties". NLRB v. Acme Industrial Co., 385 U.S. 432, 435-36, 87 S.Ct. 565, 17 L.Ed.2d 495 (1967). Safety and health conditions are conditions of employment about which employers must bargain upon request, and are therefore within the scope of the bargaining representative's duties. See Oil, Chemical & Atomic Workers Local Union No. 6-418 v. NLRB, 711 F.2d 348, 360 (D.C. Cir. 1983). The union, however, is not invariably entitled to enter the employer's plant to obtain information. "A union's bare assertion that it needs information . . . does not automatically oblige the employer to supply all the information in the manner requested." Detroit Edison Co. v. NLRB, 440 U.S. 301, 314, 99 S.Ct. 1123, 59 L.Ed.2d 333 (1979). The information must be relevant to the union's duty to represent its members. See Emeryville Research Center v. NLRB, 441 F.2d 880, 883 (9th Cir. 1971). "When the employer presents a legitimate, good faith objection on grounds of burdensomeness or otherwise, and offers to cooperate with the union in reaching a mutually acceptable accommodation, it is incumbent on the union to attempt to reach some type of compromise with the employer as to the form, extent, or timing of disclosure." Soule Glass and Glazing Co. v. NLRB, 652 F.2d 1055, 1098 (1st Cir. 1981).

We agree with the Administrative Law Judge's conclusion, approved by the Board, that the company was required to grant the hygienist access under Winona. The information sought by the union clearly was relevant to the union's statutory duty to bargain about conditions of employment[1/]. The record shows that even short exposures to high levels of noise can cause loss of hearing, stress, hypertension, nervousness, or irritability. Although union employees are not permanently stationed in the fan room, they enter it

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1/ Information bearing on conditions of employment, including plant noise levels, may be presumptively relevant. Press Democrat Publishing Co. v. NLRB, 629 F.2d 1320, 1324 (9th Cir. 1980). We need not, and do not, decide that question today.

regularly and may remain inside for a full day. The company argues that the information is irrelevant because employees did not raise the issue with the company. The union's right to information, however, "is not dependent upon the existence of some particular controversy or the need to dispose of some recognized problem". Oil, Chemical & Atomic Workers, 711 F.2d at 361. Moreover, at least two employees complained to the union about the noise level in the fan room. The information is not irrelevant merely because the company has posted a warning outside the fan room and provided hearing protection for employees. One witness testified that the company's ear protectors have a tendency to slip off when worn over hardhats. We agree, moreover, that "the proposition that a union must rely on an employer's good intentions concerning the vital question of health and safety of represented employees seems patently fallacious". 711 F.2d at 361. Finally, the fact that the union might have raised the issue earlier, but did not, does not render the information it requests irrelevant.2/

We agree with the Board's conclusion that the company failed to provide the union with the information it needed. One company study measured the average noise levels to which individual employees were exposed as they moved about the plant during an eight-hour period. The union is interested in noise levels in the fan room alone. A second company study, made after the union's complaint was filed by a company employee who is not an industrial

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2/ Similarly, the fact that the Occupational Safety and Health Administration has promulgated a noise standard, see 29 C.F.R. § 1910.95, does not make the requested information irrelevant. The union is entitled to bargain for a standard that exceeds the one established by OSHA. Although the union could have obtained the results of noise studies on file with OSHA under 29 C.F.R. § 1910.20, OHSA measurements may be subject to the same defects as measurements made by the employer. Moreover, the Board has held that the union's right to obtain information from the employer is not affected by the availability of the information from other sources absent special circumstances. See Colgate-Palmolive Co., 261 N.L.R.B. 90, 92 n.13 (1982).

hygienist, did measure noise levels in the fan room. The results of this study may have been affected by the exact location of the measuring apparatus and by the positioning of doors and louvers. The union expert's recommendations, moreover, are based in part on direct observation of employee work patterns. In short, we agree with the Board's finding that the noise measurements requested by the union have an inherently subjective component, so that the union reasonably insisted on obtaining access for its own hygienist.

The company argues that in these circumstances the union was obliged to pursue other means of obtaining the information it sought before filing an unfair labor practice charge. We disagree. The company flatly refused to provide the union's hygienist with access to the fan room. In our view, the union reasonably concluded that no other source of information was adequate. In any event, the company did not offer to provide any information until after the unfair labor practice charge had been filed. The union reasonably concluded that it could not obtain the information without an order from the Board.

III.

The Board reached the same result by a different route. It rejected the Winona test, and instead balanced the Union's interest in obtaining access against the Company's interest in preventing an invasion of its property. The Supreme Court first adopted this balancing approach to handle requests for access by non-employee union organizers who are likely to disrupt the employer's operations. See NLRB v. Babcock & Wilcox Co., 351 U.S. 105, 76 S.Ct. 679, 100 L.Ed. 975 (1956). Babcock & Wilcox and its progeny do not obviously govern this case. The balancing cases typically arise out of union requests for access posing a significant threat to the employer's rights. In Hudgens v. NLRB, for example, non-employees asserted a right to picket on the

employer's property. 424 U.S. 507, 96 S.Ct. 1029, 47 L.Ed.2d 196 (1976). Clearly the potential for disruption is not as great where, as here, the union already represents the employees, and seeks access only to study a possible threat to the health and safety of its members.

Babcock & Wilcox, moreover, discusses the employer's duty to refrain from interfering with protected employee activities. 351 U.S. at 109, 112. That duty is imposed by § 8(a)(1) of the National Labor Relations Act. This case, by contrast, is based on the employer's affirmative duty to bargain under §§ 8(a)(5) and 8(d) of that Act. Less weight may be due the employer's property rights when the employer is subject to a duty to bargain.

The choice between Winona and a balancing test is not crucial in a situation such as the one presented in this case. The National Labor Relations Act requires the Board to resolve conflicts between § 7 rights and property rights and to seek accommodation of those rights "with as little destruction of one as is consistent with the maintenance of the other". Babcock & Wilcox, 351 U.S. at 112. The Supreme Court has said that "[t]he locus of that accommodation . . . may fall at differing points along the spectrum depending on the nature and strength of the respective § 7 rights and private property rights asserted in any given context". Hudgens v. NLRB, 424 U.S. at 522. If the union's interest in obtaining information is substantial, and the employer's interest in keeping union representatives off its property is insignificant, both Winona and a balancing test point to the same result.

Because we agree with the Board that the outcome in this case is the same under either test, we need not decide whether the general balancing formula of Babcock & Wilcox applies to requests for access by unions that already represent the employees. While the outcome necessarily is closer under a balancing test than under Winona, the company's interest in denying access in

this case appears to be insubstantial. The potential for disruption is not great, since the union already represents the employees. The industrial hygienist's investigation will last a day or less. Since no employees are regularly stationed in the fan room, the hygienist will not disrupt employee work patterns.

The company suggests that a remand would allow it to develop the property interests at stake. Under Winona, the company was free to argue that allowing access would cause it undue hardship or inconvenience, or interfere with its business operations. See Soule Glass and Glazing Co. v. NLRB, 652 F.2d at 1098-99. We think this afforded the company a sufficient opportunity to develop its property interests.

The Board's petition for enforcement of its order is GRANTED.

Adm. Office, U.S. Courts — Blanchard Press, Inc., Boston, Mass.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

HOLYOKE WATER POWER COMPANY

and

Case No. 1-CA-20618

LOCAL 455, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO

Robert P. Redbord, Esq., of Boston, MA,
for the General Counsel.
James O. Hall, Esq., of Boston, MA,
for the Charging Party.
Jason Berger, Esq. and Tina L. Bestrom, Esq., of Boston, MA,
for the Respondent.

DECISION

Statement of the Case

MARTIN J. LINSKY, Administrative Law Judge: This case arose upon a charge filed by Local 455, International Brotherhood of Electrical Workers, AFL-CIO, herein the Union, on January 14, 1983. The Complaint, which issued on February 25, 1983, alleges that Holyoke Water Power Company, herein the Respondent, violated Section 8(a)(1) and (5) of the National Labor Relations Act, herein the Act, by refusing to give the Union's industrial hygienist access to the Forced Draft Fan Room (FD Fan Room) at Respondent's Mt. Tom location to observe and survey safety hazards regarding noise levels since the Union's request on January 11, 1983.

Respondent, in its answer, denied the commission of any unfair labor practices. Although Respondent admitted it denied access it claims that access is not necessary for, or relevant to, the Union's function as the exclusive bargaining representative of unit employees.

A hearing was held on April 11 and 12, 1983 in Boston, Massachusetts. All parties filed briefs. Based upon the entire record in the case, including my observation of the witnesses and their demeanor, I make the following findings of fact and conclusions of law. 1/

1/ General Counsel's motion to correct transcript is hereby granted.

Respondent violated Section 8(a)(1) and (5) of the Act by denying the Union's request for such access. In so doing, the judge noted the obligation of an employer to provide a union with information relevant and necessary to the union's performance of its representation duties. He noted also that an employer is obligated to bargain on request about health and safety conditions since they are terms and conditions of employment. Then, relying on Winona Industries, 257 NLRB 695 (1981), the judge noted that requests for access to survey for safety hazards are in the nature of requests for information and that access cannot be denied. He found that granting access would not cause the Respondent any undue hardship, and he noted the testimony of the Union's hygienist that its testing would take at most 1 day to complete.

In finding a violation, the judge rejected the Respondent's contentions that (a) access is irrelevant and unnecessary to the Union's representation duties, and (b) the Respondent did supply the information sought, albeit in the form of the test results then in the Respondent's possession. The judge noted that the many hazards inherent in exposure to high noise levels certainly make this matter relevant to the Union's representation duties. He further found the test results given the Union were inadequate for the Union's purposes. He noted that the first test merely gauged the average noise level to determine if it fell within OSHA standards, and he noted the undisputed testimony of the Union's hygienist that hearing can be damaged even where the average noise level falls within OSHA standards. Finally, he noted that there was some dispute as to the method and results of these tests.

In its exceptions the Respondent argues, inter alia, that the Union's request for access must be balanced against the Employer's property rights and that, here, its property rights must prevail because the Respondent has provided the Union with studies and has allowed the Union's business agent

access to the fan room. Accordingly, the Respondent contends, it has provided the Union with an alternate means of obtaining the needed information, thus obviating the need for access to its premises.

We agree with the Respondent's contention that an employer's right to control its property is a factor that must be weighed in analyzing whether an outside union representative should be afforded access to an employer's property. NLRB v. Babcock & Wilcox Co., 351 U.S. 105 (1956). Thus, we disagree with the judge's analysis insofar as it finds that a request for access is tantamount to a request for information; that is, the union is entitled to access if it is shown that the information sought is relevant to the union's proper performance of its representation duties. While the presence of a union representative on the employer's premises may be relevant to the union's performance of its representative duties, we disagree that that alone, ipso facto, obligates an employer to open its doors. Rather, each of two conflicting rights must be accommodated. Fafnir Bearing Co. v. NLRB, 362 F.2d 716 (2d Cir. 1966). First, there is the right of employees to be responsibly represented by the labor organization of their choice and, second, there is the right of the employer to control its property and ensure that its operations are not interfered with. As noted by the Supreme Court in Babcock & Wilcox, supra, 351 U.S. at 112, the Government protects employee rights as well as property rights, and "[a]ccommodation between the two must be obtained with as little destruction of one as is consistent with the maintenance of the other."

Thus, we are constrained to balance the employer's property rights against the employees' right to proper representation. Where it is found that responsible representation of employees can be achieved only by the union's having access to the employer's premises, the employer's property rights must

yield to the extent necessary to achieve this end. However, the access ordered must be limited to reasonable periods so that the union can fulfill its representation duties without unwarranted interruption of the employer's operations. On the other hand, where it is found that a union can effectively represent employees through some alternate means other than by entering on the employer's premises, the employer's property rights will predominate, and the union may properly be denied access.

In sum, the circumstances presented in each case involving a request for access must be carefully weighed, and each of the conflicting rights must be carefully balanced and accommodated in reaching a decision. We shall in the future analyze such cases in this fashion, and we overrule those prior Board cases such as Winona Industries, supra, to the extent that they set forth an inconsistent analysis.

Applying this analysis to the instant case, we find that the Respondent's property rights, on balance, are outweighed and that the Respondent must afford the union hygienist reasonable access to its fan room to conduct noise level studies.

First, we agree with the judge that health and safety conditions are a term and condition of employment about which an employer is obligated to bargain on request. Clearly, health and safety data is relevant to the Union's representation obligation. Minnesota Mining Co., 261 NLRB 27 (1982). It is a matter of common knowledge that exposure to excessive noise presents potential health hazards, and in this case no one disputes that the Respondent's fan room is very noisy. The Respondent's safety superintendent acknowledged that there is a noise problem there. In these circumstances, the employees' right to responsible representation entails the Union's obtaining accurate noise level readings for the fan room to ascertain the extent of the hazard and to

suggest means of ensuring that employees are properly protected. Balancing this right against the Respondent's asserted property rights, we find that, here, the property rights must yield to the extent necessary to enable the union hygienist to independently conduct his noise level tests.

We note that the Respondent says that access would entail interference with production; however, we also note that the fan room is not a production area and no employees work there full time. Rather, only mechanics and operators enter periodically to maintain and repair the equipment. In these circumstances, it appears that the presence of a union hygienist in the fan room would occasion little if any interference with the production process. Moreover, for the reasons relied on by the judge, we agree that the test results which the Respondent supplied are insufficient to meet the Union's purposes. Nor is the Respondent's willingness to permit the Union's business agent to enter the fan room sufficient absent evidence that the business agent is qualified to perform the tests and evaluate the results.

Accordingly, we agree with the judge that the Respondent must permit a union hygienist to enter its fan room to test for noise hazards. However, since the judge did not in his recommended Order place any restrictions on the access ordered, we shall modify the recommended order to provide that the access be for a reasonable period sufficient to allow the union hygienist to fully observe and survey noise level hazards. This limitation is in line with our resolve to accommodate the conflicting rights with as little destruction of one as is consistent with the maintenance of the other.[5]

---

[5] For this reason, and because such access has not even been shown necessary in the first place, we reject the contention of the General Counsel and the Union that the recommended Order should be modified to provide for plantwide access.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Holyoke Water Power Company, Holyoke, Massachusetts, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

"(a) On request, grant access, by an industrial hygienist designated by the Union, to the FD fan room for a reasonable period sufficient to permit the hygienist to fully observe and survey noise level hazards."

2. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. 11 January 1985

Donald L. Dotson, Chairman

Robert P. Hunter, Member

Patricia Diaz Dennis, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Memorandum of Understanding
between the
United States Postal Service
and the
American Postal Workers Union, AFL-CIO

Re: Accelerated Arbitration

The parties agree that the Accelerated Arbitration initiatives which were put into effect during the term of the 1994 National Agreement may be continued by agreement between the Area Managers, Labor Relations and the APWU Regional Coordinators.

The parties further agree that if the Area Manager, Labor Relations and the APWU Regional Coordinator choose not to continue these initiatives, they will jointly agree to an alternative method of reducing their arbitration backlog. In addition, they will jointly notify the undersigned whether they will continue the Accelerated Arbitration process, or have chosen some other alternative, within 30 days of receipt of this memorandum.

John E. Potter
Senior Vice President
Labor Relations

2/3/99
Date

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

2/3/99
Date

JOHN E. POTTER
VICE PRESIDENT, LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

March 20, 1998

MAR 1998

HUMAN RESOURCE MANAGERS (AREA)

SUBJECT: Non-Compliance with Arbitration Awards

It has been brought to our attention that we have an increasing problem with postal managers not complying with arbitration awards and grievance settlements, especially back pay awards.

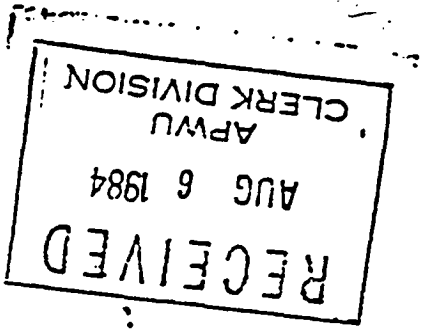
Arbitration awards and grievance settlements are final and binding. Compliance is not an option but a requirement. One of the few acceptable reasons for non-compliance with an arbitration award is if the Postal Service is seeking to have the award vacated in a federal court, which is very rare. No manager or supervisor has the authority to override an arbitrator's award or a signed grievance settlement.

Please take affirmative steps to ensure that all arbitration awards and grievance settlements are being complied with in a timely fashion. Failure to do so only damages our credibility with both our employees and our unions.

Jack Potter
John E. Potter

cc: Mr. William Henderson
Mr. Michael Coughlin

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
202-268-3819
FAX: 202-268-3074



UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

AUG 3 1984

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: Class Action
Rochester, NY 14692
H1C-2W-C 12866

Dear Mr. Connors:

On July 30, 1984, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The grievance involves an alleged violation of Article 15 by requiring union stewards to file Step 1 grievances with their immediate supervisor.

We agreed that there is no dispute between the parties relative to the meaning and intent of Article 15.2 which provides in part, "Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor . . ." Who the immediate supervisor of an employee, including a union steward, is at a particular installation must be determined locally, Finally, we agreed to resolve this case as no further action is required.

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

Sincerely,

Margaret H. Oliver
Labor Relations Department

James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

O'Donnell, Schwartz & Anderson
Counselors at Law
1300 L Street, N.W. Suite 200
Washington, D.C. 20005
(202) 898-1707

ASHER W. SCHWARTZ
JOHN F. O'DONNELL*
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ARTHUR M. LUBY
ANTON G. HAJJAR***
SUSAN L. CATLER

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**PA. AND MS. BARS ONLY
***ALSO MD. BAR

186-C

60 East 42nd Street
Suite 1022
New York, N.Y. 10165
(212) 370-5100

M E M O R A N D U M

TO: Moe Biller

FROM: Susan L. Catler SLC

DATE: June 9, 1992

RE: New EEO Case Processing Regulations
57 FR 12634 (April 10, 1992) Effective October 1, 1992
File: 50-95/1-15

On June 4, 1992, Edgar Williams relayed a question from Omar Gonzalez. Omar called about a new EEO regulation. He will ask at the President's Conference what the APWU is going to do about it.

The new regulation, 5 CFR 1614.301(c), permits the Postal Service to hold an EEO charge in abeyance, without investigating it, if a grievance is filed over the same matter. The EEO charge will be processed only after the grievance is finished.

The APWU filed comments objecting to the EEO's original proposal, which was even worse. The proposed reg required all postal EEOs be held if a grievance on the same matter was filed. The final regulation permits the USPS to hold the EEO, but only if they give written notice to the employee that they are going to hold it. The new regulations will go into effect October 1, 1992.

Because litigation is not likely to be successful and legislation in this area is very risky and unlikely to move, you may have to use this as an example of why we need a new occupant at 1600 Pennsylvania Avenue.[1]

---

[1] After the USPS starts holding EEO charges, you may want to discuss with top management why encouraging workers to ask the Union to drop a grievance so that they can move forward with their EEOs is not in the USPS's interest in light of the enhanced remedies now available through the EEO process. However, this discussion should wait until the Postal Service discovers the reg.

We have evaluated the possibility of litigation and have concluded that, based on the arbitrary and capricious standard that would be applied by Reagan and Bush appointees, we have virtually no hope of success.

With respect to legislation, a bill currently pending before the full Post Office and Civil Service Committee, H.R. 3616, would wipe out the new regs by having the EEOC, not federal agencies themselves, do the initial investigation. However, there is a great likelihood that any opening of the Federal/Postal EEO law would result in adding an election requirement for Postal employees, so like all other Federal employees Postal Workers would be able to file either a grievance or an EEO charge, not both as they can currently. In addition, Myke Reid reports that the management associations are trying to kill the bill because they believe it does not treat them, the ones who are accused of discrimination, fairly. Unless someone besides AFGE really pushes for the bill, it appears destined to die.

Attached as background are the following:

A. A memo comparing the problematic provisions in the proposed and final regulations and discussing the APWU's comments on these sections.

B. A copy of the joint comments filed by the APWU and the NALC on January 2, 1990.

C. A copy of your testimony on March 5, 1990, before two Subcommittees.

If you would like, I will give you a copy of the whole final regulations, but they are very long and detailed.

cc: William Burrus
Myke Reid

O'Donnell, Schwartz & Anderson
Counselors at Law
1300 L Street, N.W., Suite 200
Washington, D.C. 20005
(202) 898-1707

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60 East 42nd Street
Suite 1022
New York, N.Y. 10165
(212) 370-5100

M E M O R A N D U M

TO: Moe Biller

FROM: Susan L. Catler SLC

DATE: June 9, 1992

RE: Background--New EEO Case Processing Regulations
57 FR 12634 (April 10, 1992)
Effective October 1, 1992.
File: 50-95/1-15

The APWU filed comments on January 2, 1990, and presented testimony on March 5, 1990, responding to several sections of proposed regulations to restructure the Postal/Federal sector EEO complaint process, as published in the Federal Register on October 31, 1989. The final regulations are out. A discussion of the three sections objected to by the APWU follows:

1. The final regulations do not adopt the APWU's position that the EEO investigation should not be delayed because a grievance was also filed. Proposed Section 1614.301(c) provided that for persons employed by agencies not covered by 5 U.S.C. 7121(d) appeals to the Commission shall be held in abeyance during the processing of a grievance covering the same matter as the complaint.

The APWU opposed this rule, which singles out employees of the Postal Service, arguing that the Commission has no authority to deprive Postal employees of their statutory right to dual file discrimination complaints on matters which have also been grieved. The APWU explained that Postal employees are not covered by 5 U.S.C. 7121(d), which precludes a Federal employee from filing an EEO claim and a grievance simultaneously. The APWU further argued that the Commission's deferral policy is inappropriate because the individual's right to bring an EEO claim could be postponed indefinitely if the Union's grievance is appealed to arbitration.

In final form, Section 1614.301(c) reads:

> When a person is employed by an agency not subject to 5 U.S.C. 7121(d) and is covered by a negotiated grievance procedure, allegations of discrimination shall be processed as complaints under this part, except that the time limits for processing the complaint contained in §1614.106 and for appeal to the Commission contained in §1614.402 may be held in abeyance during processing of a grievance covering the same matter as the complaint if the agency notifies the complainant in writing that the complaint will be held in abeyance pursuant to this section.

57 FR 12634, 12655 (April 10, 1992)

The substance of the Commissions revisions, based on the objections of the APWU and others, is noted in the Preamble to the Final Regulations:

> We recognized that there may be some individual circumstances where holding the complaint in abeyance would not be appropriate. Therefore, we have revised the section [1614.301(c)] to permit rather than require agencies not subject to 5 U.S.C. 7121(d) to hold complaints in abeyance. Whenever an agency does so, it must notify the complainant.

57 FR at 12639.

2. The APWU was successful in having the final regulations permit cross-craft reassignment as reasonable accommodation for handicapped Postal employees if the employee wants reassignment and it does not violation a collective bargaining agreement. 57 FR at 12652, 12638. Proposed Section 1614.203(g) contained language, stating that:

> [A]n employee of the United States Postal Service shall not be considered qualified for reassignment to a position in a different craft or for any reassignment that would be inconsistent with the terms of a collective bargaining agreement covering the employee.

54 FR 45747, 45755 (October 31, 1989).

The APWU objected on the ground that it was overbroad and appeared to result in a wholesale prohibition against cross-craft reassignments which would work to the detriment of a handicapped Postal employee who desired to be reassigned instead of retiring on disability. The APWU also noted that cross-craft reassignments within the Postal Service are not necessarily in violation of the Service's collective bargaining agreements, pointing to Article 13 of the National Agreement and Subchapter 540 of the ELM.

The APWU requested that Section 1614.203(g) be amended to 1) require the Postal Service to honor requests for reassignment by handicapped employees as a reasonable accommodation where such reassignment was not inconsistent with the terms of any CBA, and 2) make clear that the availability of such reassignment would not affect the employee's entitlement to disability retirement.

In final form, Section 1614.203(g) reads in pertinent part:

> [A]n employee of the United States Postal Service shall not be considered qualified for any offer of reassignment that would be inconsistent with the terms of any applicable collective bargaining agreement.

57 FR at 12652.

This language should be read in light of the Preamble to the Final Regulations which states:

> If such a [cross-craft] reassignment is permitted by the applicable agreements and otherwise consistent with this section [1614.203(g)], we agree that it should be required. Accordingly we have revised the section to require reassignment in the Postal Service unless prohibited by applicable collective bargaining agreements.
>
> If an employee is unable to perform his job and declines an offer made in compliance with this section [1614.203(g)], the agency has completely fulfilled its obligation under this section; the agency should not and cannot cite this section as authority for a non-consensual reassignment. We do not believe that this section conflicts with the rights of employees or the obligations of agencies under applicable disability retirement systems.

57 FR at 12638.

3. The APWU's position on interest on back pay was also adopted in the final regs. Proposed Section 1614.501 expressly barred the payment of interest on back pay awards to applicants or employees under Title VII or the Rehabilitation Act based on the conclusion that the Back Pay Act of 1966, 5 U.S.C. 5596, did not serve as a waiver of sovereign immunity for this purpose.

The APWU objected to the application of this section to Postal employees based on the Supreme Court's decision in Loeffler v. Frank, 486 U.S. 549 (1988), where the Court specifically held that interest may be recovered from the Postal Service in suits under Title VII because 39 U.S.C. 401(1) of the Postal Reorganization Act of 1970 constitutes a waiver of sovereign immunity from awards of interest.

In final form, Section 1614.501 reads in pertinent part:

> Interest on back pay shall be included in the back pay computation where sovereign immunity has been waived.

57 FR at 12659.

The Preamble to the Final Regulation notes that this revision was made with the APWU's comments in mind:

> A few commenters also noted that the proposal went too far when it stated that interest may never be paid on back pay awards under part 1614 since sovereign immunity has been waived for some agencies, e.g., the Postal Service. . . . Consequently, the regulation provides for payment of interest where sovereign immunity has been waived.

57 FR at 12641-42.

171 Cont.

[illegible] R. Sombrotto
President

(202) 393-4695

National Association of
Letter Carriers (AFL-CIO)
100 Indiana Ave., N.W.
Washington, D.C. 20001

JOINT BARGAINING COMMITTEE

Moe Biller
President

(202) 842-4200

American Postal Workers
Union (AFL-CIO)
1300 L St., N.W.
Washington, D.C. 20005

January 2, 1990

Office of the Executive
Secretariat
Room 10402, Equal Employment
Opportunity Commission
1801 L Street, N.W.
Washington, D.C. 20507

Dear Sir:

The National Association of Letter Carriers, AFL-CIO ("NALC"), and the American Postal Workers Union, AFL-CIO ("APWU"), by their undersigned attorneys, hereby jointly submit the following comments with respect to the Commission's proposed restructuring of the Federal sector EEO complaint process, as published in the Federal Register on October 31, 1989.

The APWU is the collective bargaining representative of all employees of the United States Postal Service ("Postal Service") in the clerk, maintenance, motor vehicle, and special delivery crafts. The NALC is the collective bargaining representative of all employees of the Postal Service in the city letter carrier craft. NALC and APWU (hereafter "the Unions") have been parties to successive collective bargaining agreements with the Postal Service since 1971.

1. Section 1614.203(g) of the proposed regulation contains language, apparently derived from 5 U.S.C. 8337(a) and 8451(a)(2)(D), stating that "an employee of the United States Postal Service shall not be considered qualified for reassignment to a position in a different craft or for any reassignment that would be inconsistent with the terms of a collective bargaining agreement covering the employee." The inclusion of this language in the regulation appears to result in a wholesale prohibition against cross-craft reassignments in the Postal Service.

The Unions submit that this prohibition against cross-craft assignments is overbroad. The referenced provisions of 5 U.S.C. 8337(a) and 8451(a) are designed to protect a disabled postal employee's right to disability retirement benefits when that employee is unable to perform useful and efficient service within the employee's craft. The statutes prohibit the Postal Service from defeating an employee's application for disability retirement by reassigning the employee to a different craft. However, in those cases where a handicapped postal employee who is unable to perform within his craft voluntarily elects not to apply for disability retirement status and instead wishes to continue employment with the Postal Service, the Rehabilitation Act should be construed to require the Postal Service to consider a cross-craft reassignment as a reasonable accommodation, provided only that such reassignment does not violate an applicable collective bargaining agreement.

Cross-craft assignments within the Postal Service are not necessarily in violation of the Service's collective bargaining agreements. For example, Article 13 of the National Agreement between the Postal Service, APWU, and NALC requires the Service to honor requests for temporary or permanent cross-craft assignments by ill or injured employees under specified circumstances. In addition, Subchapter 540 of the Postal Service Employee and Labor Relations Manual, which is incorporated by reference by the collective bargaining agreement, requires the Service under certain circumstances to assign employees who have been injured on the job to limited duty in other crafts. The change in the proposed regulation we suggest would treat handicapped employees in a manner which is consistent with this framework.

In sum, the Unions propose that Section 1614.203(g) of the proposed regulation be amended to require the Postal Service to honor requests for reassignment by handicapped employees as a reasonable accommodation, except where such reassignment would be inconsistent with the terms of an applicable collective bargaining agreement. The regulation should also state that the availability of such a reassignment shall not affect the employee's entitlement, if any, to disability retirement pursuant to 5 U.S.C. 8337 or 5 U.S.C. 8451.

2. Section 1614.301(c) of the proposed regulation provides that for persons employed by agencies not covered by 5 U.S.C. 7121(d) appeals to the Commission shall be held in abeyance during processing of a grievance covering the same matter as the complaint. The Unions oppose the application of this rule to employees in the Postal Service.

Postal employees, unlike their federal counterparts, have the statutory right to file discrimination complaints on matters which have also been grieved. Employees of the United States Postal Service are not covered by 5 U.S.C. 7121(d), the provision which requires Federal employees to elect either the EEO process or the negotiated grievance procedure and precludes them from filing in both fora on the same matter. While the Commission does have authority to issue regulations to carry out its responsibilities, those responsibilities do not include taking away individual rights granted by statute. Holding in abeyance without investigation allegations of discrimination filed by postal employees during the processing of a grievance covering the same matter does just that. As proposed in Section 1614.301(c), postal employees who want to exercise their right to have their discrimination allegations heard in the EEO process can effectively be deprived of their individual right to do so by their Union's determination that the same matter also violates the collective bargaining agreement, irrespective of whether the grievance raises issues of discrimination. As only the Union determines whether a grievance goes beyond the initial step, under the proposed regulation postal employees could be deprived of their statutory right to have their discrimination allegations considered in the EEO process for many months (conceivably years if the grievance is appealed to arbitration). Insofar as such a result is both inappropriate and beyond the Commission's authority, the Unions suggest that the Commission omit Section 1614.301(c) from the final regulations. The ability of postal employees to exercise their legal rights should not be affected by their Union's decision to enforce the collective bargaining agreement.

3. Proposed Section 1614.501 expressly bars the payment of interest on back pay awards to applicants or employees under Title VII or the Rehabilitation Act. This prohibition is based on the conclusion that the Back Pay Act of 1966, 5 U.S.C. 5596, does not serve as a waiver of sovereign immunity for this purpose.

This reasoning with respect to sovereign immunity is not applicable to the Postal Service. In Loeffler v. Frank, ___U.S.___, 108 S.Ct. 1965 (1988), the Supreme Court specifically held that interest may be recovered from the Postal Service in suits under Title VII:

> "We conclude that, at the Postal Service's inception, Congress waived its immunity from interest awards, authorizing recovery of interest from the Postal Service to the extent that interest is recoverable against a private party as a normal incident of suit."

Id. at 1970. The Court based this conclusion on the sue-and-be-sued clause of the Postal Reorganization Act of 1970, 39 U.S.C. 401(1) which the Court found constituted a waiver of sovereign immunity from awards of interest. Id. at 1969-70, 1974-75. Accordingly, the proposed regulation should be amended to provide for interest awards against the Postal Service.

Respectfully submitted,

American Postal Workers Union, AFL-CIO

By:_____
Susan L. Catler
O'Donnell, Schwartz & Anderson
1300 L St., N.W.
Washington, D.C. 20005

National Association of Letter Carriers, AFL-CIO

By:_____
Keith E. Secular
Cohen, Weiss & Simon
330 W. 42nd Street
New York, NY 10036

SLC/KES:tjm

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

Jurisdictional issues, arising under the Modified Article 15 pilot program, will not be addressed by arbitrators in that forum.

Whenever jurisdictional issues are raised under the Modified Article 15 pilot program, and no resolution is reached by the parties at Step 2, the Union may appeal such issues to the regional level of the regular grievance and arbitration procedure. Such issues will be processed pursuant to those provisions under Article 15 of the National Agreement.

William J. Downes
Director
Office of Contract
Administration
U.S. Postal Service

Date 8/29/89

Francis J. Conners
Executive Vice President
National Association of
Letter Carriers, AFL-CIO

Date 10/3/89

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

Date 9-20-89

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

June 2, 1995

MANAGERS, HUMAN RESOURCES (AREAS)

SUBJECT: Follow-up to Memorandum of Understanding
Modified Arbitration Decisions

This is to further follow up on my previous letter concerning modified arbitration decisions and the Memorandum of Understanding on that subject.

Arbitration awards issued under a modified procedure continue to be binding on the office of origin, even after the office has withdrawn from the modified procedure. However, under no circumstances may such a modified arbitration award be cited in arbitration after the office has withdrawn from the modified procedure, except as follows.

In the case of an office which withdraws from a modified procedure and then re-enters a modified procedure, awards from the initial entry in the modified procedure may be cited in the subsequent modified procedure, unless the local parties otherwise mutually agree.

The above is further clarification in this area, and does not disturb previous agreements concerning citing awards from modified grievance/arbitration procedures, or withdrawal from the Modified 15 program.

Anthony J. Vegliante
Manager
Contract Administration (APWU/NPMHU)

cc: Mr. Burrus, American Postal Workers Union
Labor Relations Specialists (Area)

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

UNITED STATES POSTAL SERVICE

May 23, 1995

MANAGERS, HUMAN RESOURCES (AREAS)

SUBJECT: Follow-up to Memorandum of Understanding Modified Arbitration Decisions

This is to follow up on my previous letter concerning modified arbitration decisions and the Memorandum of Understanding on that subject.

If an office withdraws from a modified procedure, any arbitration award which was heard under that procedure but is issued after the withdrawal is binding on that office. However, no modified award from that office may be cited in arbitration after the office has withdrawn from the modified procedure, regardless of whether it was issued while the office was in the modified procedure or after withdrawal from the procedure.

In the case of an office which withdraws from a modified procedure and then re-enters a modified procedure, awards from the initial entry in the modified procedure may be cited in the subsequent modified procedure, unless the local parties otherwise mutually agree.

The above is further clarification in this area, and does not disturb previous agreements concerning citing awards from modified grievance/arbitration procedures, or withdrawal from the Modified 15 program.

Anthony J. Vegliante
Manager
Contract Administration (APWU/NPMHU)

cc: Mr. Burrus, American Postal Workers Union
Labor Relations Specialists (Area)

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
AMERICAN POSTAL WORKERS UNION, AFL-CIO

RE: Modified Arbitration Decisions

The parties agree that Arbitration Awards issued under any Modified Grievance procedure are not to be cited in any future arbitrations when and if the parties withdraw from that modified grievance procedure.

Arbitration Awards rendered in any modified grievance procedure are intended to apply only in the specific subject office of the grievance and only while the office is under the modified grievance procedure.

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

Date: 4-4-95

Anthony J. Vegliante
Manager
Contract Administration
APWU/NPMHU

Date:

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

The parties hereby agree that any arbitration award arising under the Modified Article 15 grievance and arbitration procedure will be referenced in the following manner:

1. It shall not be cited as precedent in any future arbitration proceedings occurring outside of a test office.

2. It may, however, be cited as precedent in any future arbitration proceedings occurring within a test office.

This Memorandum will apply to any office implementing Modified Article 15 and shall continue as long as the program is in existence at the test office.

Stephen W. Furgeson
General Manager
Grievance and Arbitration Division
Labor Relations Department

9/6/88
DATE

William Burrus
Executive Vice President
American Postal Workers Union, AFL-CIO

9/6/88
DATE

Francis J. Conners
Executive Vice President
National Association of Letter Carriers, AFL-CIO

DATE

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

When the Modified Article 15 test program is terminated in a particular test site, the following procedures have been agreed upon:

1) An expiration date will be agreed upon locally;

2) All grievances pending in the Modified Article 15 process shall be decided by the appropriate management official(s) under that process. Any appeals from adverse decisions shall be processed pursuant to the regular contractual procedure. For example:

Modified Article 15	Current Article 15
Step 1 decision to	Step 2
Step 1a decision to	Step 2
Step 2 decision to	Step 3

3) Unless the local parties otherwise agree, those arbitration appeals already scheduled under the Modified Article 15 process will be heard as scheduled. All other grievances pending arbitration shall be forwarded to the region for logging by appeal date on the register of pending cases for regular regional or expedited panels, as appropriate.

4) All Step 1 grievances filed after the date of termination from the Modified Article 15 process shall be in accordance with the regular contractual procedure.

5) Postal and Union officials designated by the parties will meet at the regional level to determine future use of arbitrators certified under the pilot program.

William J. Downes
Director
Office of Contract
Administration
Labor Relations Department

DATE 4/3/96

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

DATE 4/4/96

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
1300 L Street NW
Washington, DC 20005-4128

Subject: Case No. H0C-NA-C 26

Dear Bill:

Recently, we met to discuss the implementation of Arbitrator Dobranski's award in Case Number H0C-NA-C 26. The parties have agreed to the following as a final and binding resolution of all issues regarding the implementation of the "new steps" created by the June 12, 1991 Interest Arbitration Award and the interpretation and application of the October 12, 1999 award in Case H0C-NA-C 26.

A list of affected employees who were promoted and placed in an incorrect step has been developed and furnished to the APWU at the national level. We have agreed that this list contains the names of all employees entitled to compensation under this settlement. No payments are authorized for individuals not listed on this printout.

The salary history of each employee on the above list who was on the rolls as of the date of Arbitrator Dobranski's award will be recalculated as if the employee had not been placed in the lower step following a promotion. The dollar difference between the actual and recalculated earnings will be identified. This difference will then be compared to any "promotion pay anomaly" payments received by the employee for the same time period. If the recalculated earnings are greater than the "promotion pay anomaly" payment total, the employee will be paid the difference, subject to appropriate payroll deductions, as an adjustment to the employee's regular paycheck. Negative balances will be automatically waived.

Form 50 changes will be made to reflect the above and the employee will be placed in the step the employee otherwise would have attained. It is anticipated that the Form 50 changes will be completed June 16 and that payment will be made in the check for pay period 19, which ends September 8, 2000.

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

Implementation of this award will be coordinated at the national level. A national Administrative Dispute Resolution Committee will be established to help resolve disputes that arise out of the implementation of this award. No individual grievances will be filed or processed concerning implementation of the award.

The above is a final and complete settlement of all issues relating to implementation of the award in Case No. H0C-NA-C 26.

Sincerely,

Ed Ward

Edward F. Ward, Jr.
Manager
Collective Bargaining and Arbitration
Labor Relations

William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO

Dated: May 23, 2000

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
1300 L Street NW
Washington, DC 20005-4128

Subject: Additional agreement for Case H0C-NA-C 26

Dear Bill:

This is to confirm our agreement concerning a limited number of additional grievances filed and held in abeyance pending the outcome of Case H0C-NA-C 26. These grievances involve employees who worked higher level assignments and were paid higher level as if they had been placed in an incorrect lower step. Because these employees were not promoted, their names do not appear on the list of employees who were promoted and placed in an incorrect step. Those grievances currently in the system involving this higher level issue will be identified and the names and social security numbers of the grievants forwarded to the national level for resolution consistent with the award of Arbitrator Dobranski identified above. This understanding applies only to grievances in the system as the date of Arbitrator Dobranski's award on this subject.

The parties have further agreed that this document shall not be publicized, except to enforce its terms, and will not be viewed as a precedent for any purpose whatsoever.

Sincerely,

Ed Ward

Edward F. Ward, Jr.
Manager
Collective Bargaining and Arbitration
Labor Relations

William Burrus

William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO

Dated: May 23, 2000

Memorandum of Understanding

It is agreed by the United States Postal Service; the National Association of Letter Carriers, AFL-CIO; and the American Postal Workers Union, AFL-CIO, 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.

W. E. Henry

William E. Henry, Jr.
Director, Office of Grievance
and Arbitration
United States Postal Service

Vincent R. Sombrotto

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

William Burrus

William Burrus
American Postal Workers Union,
AFL-CIO

October 16, 1981

WASHINGTON, D.C. 20036
AREA CODE 202
833-9346

October 3, 1975

Mr. James V. P. Conway
Senior Assistant Postmaster
General
Employee and Labor Relations
United States Postal Service
Washington, D.C. 20262

Dear Mr. Conway:

At the Blue Ribbon Committee meeting on September 23, 1975, the subject of the filing of requests for reconsideration by arbitrators of their awards was discussed. It was agreed that sound labor relations policy and the arbitration processes established under Article XV would be better served by precluding requests for reconsideration by either a Union or Postal Service for reconsideration of arbitration awards. Accordingly, it was agreed that, beginning with the date of this letter, no requests or motions for reconsideration of arbitration awards would be filed by any Union signatory to the 1975 National Agreement or by the Postal Service.

Out of an abundance of caution, I wish to make clear that nothing herein is intended to preclude any right that any party may have to seek judicial review of an arbitrator's award. Nor is anything herein intended to preclude an arbitrator from correcting clerical mistakes or obvious errors of arithmetical computation.

If you find that this letter accurately expresses our agreement, please sign in the space provided below.

/s/
James V.P. Conway
Senior Assistant Postmaster
General

/s/
Bernard Cushman
Chief Spokesman for the
Unions

BC/ap

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

APR 24 1984

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers Union,
AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: M. Pfister
Elizabeth, NJ 07207
H1C-1N-C 24361

Dear Mr. Connors:

On February 7, 1984, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The question in this grievance is whether the Postal Service is obligated to pay witnesses for time spent waiting to testify at an arbitration hearing.

During our discussion, it was mutually agreed that the following would represent a full settlement of this case:

1. When arbitration hearings are held at the site where the grievance arose, it is Postal Service policy to stagger the appearance of employee witnesses in order to avoid the need for any waiting time. The consistent practice has been to require employee witnesses to perform work at a location from which they can be readily called when needed to testify. Conversely, when an arbitration hearing is scheduled at a location away from the site where the grievance arose and reasonable waiting time is necessary, the consistent practice has been that the employee remains on employer time while waiting to testify.

2. Payment will be on a no gain-no loss basis.

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

Sincerely,

Thomas J. Lang
Labor Relations Department

James Connors
Assistant Director
Clerk Craft Division
American Postal Workers Union,
AFL-CIO

O'Donnell & Schwartz
Counselors at Law

1126 Sixteenth Street, N.W., Suite 700
Washington, D. C. 20036
(202) 887-5955

285 Madison Avenue
New York, N.Y. 10017
(212) 532-8900

ASHER W. SCHWARTZ
JOHN F. O'DONNELL*
DARRYL J. ANDERSON
ARTHUR M. LUBY
ANTON GEORGE HAJJAR
SUSAN L. CATLER

*MEMBER N. Y. BAR ONLY

MEMORANDUM

TO: Moe Biller
Bill Burrus
Tom Neill

FROM: Darryl Anderson

RE: Short Statute of Limitations on Suit to Set Aside Arbitration Award

DATE: March 20, 1984

Notwithstanding the Supreme Court's recent decision in DelCostello applying a six-month statute of limitations in DFR cases brought against unions, the Courts have continued to apply shorter state limitations periods to actions to set aside arbitration awards. This means that, when we wish to challenge an arbitration award, we must do so within 20 to 90 days after the award issues to be sure we will not be time-barred, depending on the applicable limitations period under state law.

Because the finality and enforceability of arbitration awards tends to favor the Union, this is not a bad development; it merely requires diligence on our part if we choose to challenge an award. It has not been settled which limitations period will apply under our Agreement. We contend that it must be a Federal period of 90 days or the three-month period set by District of Columbia law; but the USPS may try to apply a shorter period in cases which arise in a state with a shorter period.

DJA:kr

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

FEB 15 1985

Re: Class Action
West Palm Beach, FL 33401
H1C-3W-C 41731

Dear Mr. Connors:

On February 4, 1985, we met to discuss the above-captioned case at the fourth step of the contractual grievance procedure.

This question in this grievance is whether a steward has a right to be represented by another steward.

During our discussion, it was mutually agreed that the following would represent a full settlement of this case:

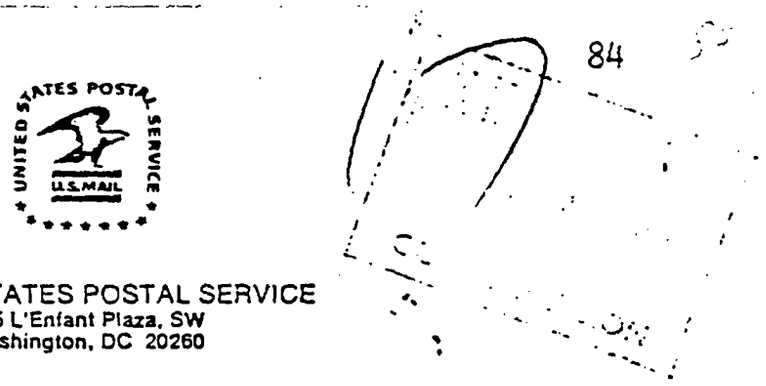
> A steward, just as any other employee, has a right to representation by another steward.

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

Sincerely,

Daniel A. Kahn
Labor Relations Department

James Connors
Assistant Director
Clerk Craft Division
American Postal Workers Union,
AFL-CIO



UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

JUL 26 1984

Re: R. Bergeron
Orlando, FL 32802
H1C-3W-C 31937

Dear Mr. Connors:

On June 12, 1984, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The grievance concerns whether it is proper for a supervisor to require an employee to discuss the nature of his/her grievance before the employee is permitted to see a steward.

We mutually agreed that this grievance does not fairly present an interpretive dispute. There is nothing improper about the supervisor requiring an employee to relate the general nature of the problem or grievance before the employee sees a steward. However, the employee should not be arbitrarily required to divulge detailed information if he/she insists on seeing a steward first.

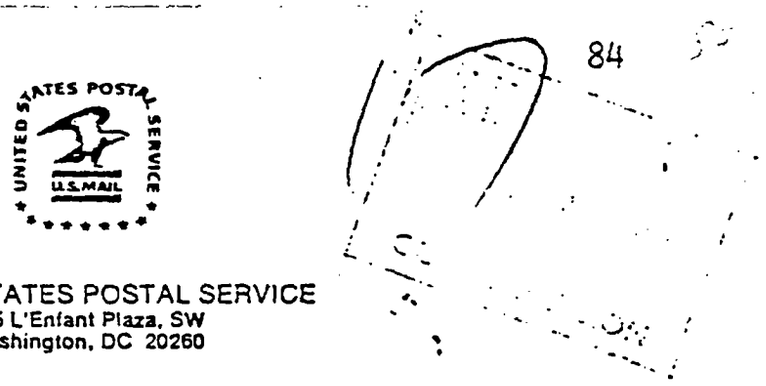
Please sign and return the enclosed copy of this decision as acknowledgment of agreement to resolve this case.

Time limits were extended by mutual consent.

Sincerely,

Robert L. Eugene
Labor Relations Department

James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO



UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

JUL 26 1984

Re: R. Bergeron
Orlando, FL 32802
H1C-3W-C 31937

Dear Mr. Connors:

On June 12, 1984, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The grievance concerns whether it is proper for a supervisor to require an employee to discuss the nature of his/her grievance before the employee is permitted to see a steward.

We mutually agreed that this grievance does not fairly present an interpretive dispute. There is nothing improper about the supervisor requiring an employee to relate the general nature of the problem or grievance before the employee sees a steward. However, the employee should not be arbitrarily required to divulge detailed information if he/she insists on seeing a steward first.

Please sign and return the enclosed copy of this decision as acknowledgment of agreement to resolve this case.

Time limits were extended by mutual consent.

Sincerely,

Robert L. Eugene
Labor Relations Department

James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

October 2, 1995

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Mr. Burrus:

This is in response to your correspondence dated August 30, 1995, in which you expressed concern, because it is your belief, that Postal Data Centers do not have an automated or manual system to compensate TE's for grievance settlements which involve compensation.

Your concern is for naught, as the Postal Data Center does in fact, have a system in place for the processing of grievance settlements which involve compensation for TE employees.

According to the PDC, a manual system is in place, and grievance settlements which involve compensation for TE's are processed accordingly.

If anything out of the ordinary develops, please notify my office and we will handle it on a case by case basis.

Sincerely,

Anthony J. Vegliante
Manager
Contract Administration (APWU/NPMHU)

OCT 1995

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

August 30, 1995

Dear Tony:

I am informed that the Postal Data Centers do not have an automated or manual system to compensate TEs for grievance settlements thereby delaying compensation for such employees. In that TEs are governed by the provisions of Article 15, the parties envisioned that grievance settlements would require compensation of such employees.

I request that your office determine the procedures implemented by the PEDC and advise of your findings, and changes if necessary.

Thank you for your attention to this matter.

Sincerely,

William Burrus
Executive Vice President

Anthony J. Vegliante, Manager
Grievance & Arbitration Division
USPS, Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

O'Donnell, Schwartz & Anderson
Counselors at Law
1126 Sixteenth Street, N. W., Suite 700
Washington, D. C. 20036
(202) 887-5955

ASHER W. SCHWARTZ
JOHN F. O'DONNELL •
DARRYL J. ANDERSON
ANTON G. HAJJAR
ARTHUR M. LUBY
SUSAN L. CATLER

• MEMBER N.Y. BAR ONLY

O'Donnell & Schwartz
285 Madison Avenue
New York, N. Y. 10017
(212) 532-8900

M E M O R A N D U M

TO: Moe Biller
William Burrus
Thomas Neill

FROM: Anton Hajjar

RE: Travel Time Grievance

DATE: February 22, 1985

Mittenthal held that Art.15.4.A.5 (". . . witnesses . . . shall be on employer time when appearing at the hearing . . .") means what it says, and precludes payment for travel to and from hearings. He said that it would take overwhelming evidence of past practice to overcome this "plain language". The USPS was able to show a few instances of non-acquiescence by management over the years, and the arbitrator also cited the unfortunate Connors settlement against us (p.6).

We hoped that Mittenthal would find that, in light of our strong evidence of past practice, it was not enough for management to discredit these instances as abberations contrary to policy, but would be required to show many actual instances of non-payment; i.e., hold that we made out a prima facie case of past practice that shifted the burden to them to rebut it. After all, they have the records. He didn't accept this evidentiary argument, however. Putting aside an advocate's partisanship, the decision was not unexpected and is not clearly wrong. It is a shame that his timing means we have to wait 3 years to fix this situation.

AGH:nlm

ARBITRATION AWARD

February 15, 1985

UNITED STATES POSTAL SERVICE

-and- Case No. H1N-NA-C-7

NATIONAL ASSOCIATION OF LETTER CARRIERS

-and-

AMERICAN POSTAL WORKERS UNION
Intervenor

Subject: Payment of Union Witnesses - Travel and Waiting Time For Arbitration Hearings

Statement of the Issue: Whether the Postal Service is required by the National Agreement to pay Union witnesses for time spent traveling to and from arbitration hearings and for time spent waiting to testify at arbitration hearings?

Contract Provisions Involved: Article 5; Article 15, Section 4A(5); Article 17, Section 4; and Article 19 of the July 21, 1981 National Agreement.

Appearances: For the Postal Service, Eric J. Scharf, Attorney, Office of Labor Law; for NALC, Richard N. Gilberg, Attorney (Cohen, Weiss & Simon); for APWU, Anton Hajjar and Philip Tabbita, Attorneys (O'Donnell & Schwartz).

Statement of the Award: With respect to travel time, the grievance is denied. With respect to waiting time at the hearing, the grievance is disposed of in the manner set forth in the foregoing opinion.

BACKGROUND

This grievance concerns Union witnesses who attend an arbitration hearing during their regular working hours. Such witnesses are paid for time spent testifying and reasonable waiting time at the hearing. The question in this case is whether they are also entitled to pay for time spent traveling to and from the hearing and all time waiting at the hearing. NALC and APWU claim that payment for such time is required by Article 15, Section 4A(5) of the National Agreement. The Postal Service disagrees.

Because this is an interpretive question initiated by NALC at Step 4 of the grievance procedure, there is no specific set of facts before me. It would be helpful therefore to describe in general terms how the parties handle Union witnesses. Ordinarily a Business Agent informs Management in advance of the names of the employees he intends to call as witnesses at a pending arbitration. He may confer with Management to determine when the witnesses should be released from work. But Management usually is in the best position to predict when witnesses will be needed. For most arbitrations involve disciplinary action and hence require the Postal Service to present its case first. Management estimates the length of its presentation and plans for Union witnesses accordingly. It tells supervision to release the witness at a certain time although occasionally the witness may request to leave earlier.

If the hearing is held in the same facility where the witness is working, no travel time issue is likely to arise. But if the hearing is somewhere else, the witness must often take a car, bus or train to the hearing site. After he arrives, he may have to wait a period of time before he is called upon to testify. This travel time to and from the hearing and waiting time at the hearing are the crux of this dispute.

Article 15, Section 4A(5) of the National Agreement addresses this subject:

> "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 time spent as a witness is part of the employee's regular working hours." (Emphasis added)

NALC stresses the phrase "time spent as a witness" and contends that "witness" status begins when an employee is released from work to attend the arbitration and ends when the employee returns to regular work. It believes, accordingly, that "time spent as a witness" includes travel and all wait time. It further maintains that Article 15, Section 4A(5) should be construed in the Union's favor because of past practice. It alleges that the practice nationally has been to compensate Union witnesses for travel and all wait time. It claims that the Postal Service unilaterally discontinued this practice after the award in Case No. N8-N-0221 which held that Article 17, Section 4 did not entitle grievants to pay for time spent traveling to and from Step 2 meetings.

The Postal Service asserts that the phrase "time spent as a witness" cannot be read in isolation but rather must be related to the far more significant phrase, "when appearing at the hearing." It urges that the latter words plainly reveal the parties' intention to pay only for such time as witnesses are actually present "at the hearing", i.e., time spent testifying and reasonable waiting time. It denies that there has been a practice of paying witnesses in the manner claimed by NALC. It contends that Management policy nationally has been to pay witnesses only for time spent testifying and reasonable waiting time. It maintains that any instances of payment for travel time or all wait time would be deviations from its long-standing policy and practice.

It should be noted that although this case only involves witnesses at an arbitration hearing, the parties agree that grievants should be treated the same as witnesses for pay purposes.

DISCUSSION AND FINDINGS

Article 15, Section 4A(5) deals with employees whose "attendance as witnesses" is "required" at an arbitration hearing "during their regular working hours." It provides that such witnesses "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." The underscored language is the primary test for determining when an employee-witness is "on Employer time." He is paid only "when appearing at the hearing." These words clearly refer to physical presence at the hearing. When an employee-witness is traveling from his work location to the hearing site or vice-versa, he is certainly not "...at the hearing." Thus, travel time is not compensable.

NALC seeks to avoid this conclusion by stressing the contract phrase, "time spent as a witness." It asserts that when an employee is traveling to the hearing to testify or returning to his work place after testifying, all of that is "time spent as a witness." It urges he should therefore be considered "on Employer time" and be paid when traveling.

The difficulty with this argument is that it ignores the relationship between principle and proviso in the sentence in question. The principle is that the employee-witness be paid "when appearing at the hearing." The proviso is simply a means of insuring that the employee-witness be paid for "appearing at the hearing" only to the extent that such appearance time occurs "during regular working hours." This proviso serves to narrow the principle upon which it rests*, to limit the application of Section 4A(5). It is a secondary test for determining when an employee-witness is "on Employer time." But NALC here seeks to make the proviso a primary test, to allow the proviso to enlarge the application of Section 4A(5). That certainly is not what the parties intended. Indeed, if NALC were correct, there would have been no need for the parties to say anything other than that the employee shall be "on Employer time" for all "time spent as a witness." That would in effect treat the principle and the critical words in Section 4A(5), "when appearing at the hearing", as mere surplusage. Such a reading of Section 4A(5) conflicts with the plain meaning of its terms.

These findings are supported by my earlier award in Case No. H8N-1A-C-7812 (also referred to as Case No. N8-N-0221). There, the issue was whether grievants are entitled to pay for travel time to and from Step 2 meetings. Article 17, Section 4 called for grievants to be paid in Step 2 "for time actually spent in grievance handling, including investigations and meetings with the Employer." The ruling was that this contract language does not encompass travel time. I stated:

> "...While the grievant is on a bus or train en route to the [Step 2] meeting, he is not engaged in the 'actual...handling...' of a grievance. He is traveling, nothing more. His 'grievance handling' begins only when he arrives at the meeting..."

* That is the normal function of a proviso.

Similarly, "time spent as a witness" in the Article 15, Section 4A(5) proviso begins when the employee arrives at the arbitration hearing and ends when he leaves. These words do not encompass travel time. They apparently were meant to be synonomous with time spent "appearing at the hearing."

Moreover, the parties were well aware of how to express a pay formula in terms which would embrace travel time. They stated in Article 17, Section 4 that "...the Employer will compensate any witnesses for the time required to attend a Step 2 meeting." Clearly, the "time required to attend..." includes travel time. The arbitration witness clause speaks of paying the employee "when appearing at the hearing" or for "time spent as a witness." It says nothing whatever about "time required to attend..." the arbitration hearing. It can hardly be interpreted to mean the same thing as the Step 2 witness payment clause.

NALC resists these conclusions in the belief that Article 15, Section 4A(5) must be interpreted in light of past practice. It maintains that Management has customarily paid travel time to employees required as witnesses at arbitration hearings. It urges that this long-standing practice has become an accepted part of the postal bargaining relationship and should be a controlling consideration in the disposition of this grievance.

This argument is not persuasive. To begin with, the principle set forth in Article 15, Section 4A(5) seems reasonably clear. I have already explained why this language plainly supports the Postal Service's view. Given my reading of Section 4A(5), it would require the strongest proof of past practice to interpret this clause in a manner contrary to its apparent intent, that is, to interpret this clause as authorizing pay for travel time. NALC and APWU have not met that test. They have introduced evidence that travel time was paid to arbitration witnesses on many occasions. But the Postal Service has introduced evidence that travel time was not paid on other occasions and, more importantly, that its policy has for years always been to deny payment for travel time. The most that can be said, on the present state of the record, is that there has been a mixed practice. It is clear, however, that the management group responsible for negotiating Section 4A(5) never acquiesced in any payment of travel time to arbitration witnesses.

It would serve no useful purpose to review all of the evidence introduced by the parties. But certain points made by the Postal Service should be noted. For those points together preclude a finding that the parties had in effect, through past practice, agreed that Section 4A(5) calls for the payment of travel time to arbitration witnesses.

First, there are several grievance answers in which the Postal Service unequivocally rejected the payment of travel time for arbitration witnesses. A NALC grievance (V-74-6217) requested payment for travel time to and from arbitration for a grievant-witness. That grievance was denied in Step 3 in 1974, the Postal Service asserting that "there is no requirement for the employer to pay for the witness' travel time." Another NALC grievance (NC-N-4440) requested payment for such travel time for a grievant-witness. That grievance was denied in Step 4 in 1977, the Postal Service asserting that "there is no contractual provision which allows for the payment of travel to and from the hearing site." The matter was appealed to arbitration but later withdrawn in 1980. The withdrawal letter*, signed by the parties, stated the Postal Service's position that "only time at the arbitration hearing is compensable."

APWU seems to have conceded the practice question in its resolution of a recent grievance (H1C-5F-C-20272). That grievance was settled in Step 4 in 1984, the parties agreeing that the Postal Service "is not contractually obligated to pay employees for the time spent traveling to and from the hearing location nor has such a policy been established by the Postal Service." Although this settlement was later repudiated by APWU on the ground that it had been misled by Management, the fact remains that an informed Union representative acknowledged that the Postal Service had never established a policy of paying travel time to arbitration witnesses.

All of this was confirmed by the testimony of various Postal Service Regional Managers. They instructed their local management people not to pay travel time to arbitration witnesses. Some of them communicated that message to Union

* This withdrawal was "without precedent." However, I refer to it here not to prove NALC conceded anything but rather to show the Postal Service was still asserting its view that Section 4A(5) did not authorize pay for travel time.

representatives. The Northeast Manager of Arbitration recalled a 1975 conversation with a NALC Business Agent who objected to the Postal Service's refusal to pay travel time and suggested that travel be minimized by scheduling arbitrations at local sites. An Eastern Manager recalled a NALC Local President complaining about the Postal Service being "cheap" for not paying travel time. It may well be that Management's instructions were sometimes (or often) misunderstood or ignored. But the resultant payments for travel time were certainly not made with the knowledge or approval of those responsible for Postal Service policy on Section 4A(5).

Moreover, the bargaining history is highly suggestive. NALC proposed in the 1978 negotiations* that the arbitration witness clause be changed to read, "...Employees whose attendance is required at [arbitration] hearings during their regular hours shall be on Employer time." These words would have granted pay for travel time for witnesses. The Postal Service rejected the proposal. If the NALC proposal simply reflected a long-established national practice, as NALC claims, there would have been no reason for the Postal Service to object to this change in contract language. Its objection suggests the practice was quite different. Either the practice was to deny travel time or there was a mixed practice. The Postal Service was obviously attempting to prevent the introduction of a new contractual rule, paid travel time for witnesses.

None of this is meant to detract from the force of the Union's evidence. Rather, the purpose is to illustrate my conviction that there was a mixed practice. To prevail here, the Unions would have to show a practice so uniform and so widely accepted as to warrant finding that the higher echelons of labor-management authority had agreed to apply Section 4A(5) in the manner urged by NALC and APWU. No such showing has been made. Therefore, practice cannot alter my earlier interpretation of Section 4A(5).

* I rely on bargaining history not to prove the meaning of Section 4A(5) but rather to help determine the nature of the disputed practice.

The remaining issue is whether arbitration witnesses are entitled to pay for all waiting time at the hearing as the Unions claim or only reasonable waiting time as the Postal Service claims.

The answer can be found, once again, in the language of Section 4A(5). The arbitration witness is "...on Employer time when appearing at the hearing." These words suggest that all time spent at the hearing is compensable. There is, however, one important qualification. The benefit in Section 4A(5) applies only to those "whose attendance is required at the hearing..." Suppose, for instance, a witness appears at the very start of the hearing some hours before he is expected to testify. His presence then may or may not be "required." The reason for his being there may be critical. 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. The point at which someone's attendance is "required" is a question of fact. The relevant considerations are the judgment of the parties' advocates, the nature of the case, the relationship of the witness to the case, the testimony he is expected to give, and so on. This ruling is not altered in any way by past practice.

AWARD

With respect to travel time, the grievance is denied. With respect to waiting time at the hearing, the grievance is disposed of in the manner set forth in the foregoing opinion.

Richard Mittenthal

Richard Mittenthal, Arbitrator

April 27, 1982

Joseph F. Morris
Senior Assistant Postmaster General
Employee & Labor Relations Group
United States Postal Service Headquarters
Washington, D.C. 20260

Dear Mr. Morris:

Under the provisions of Article 15, Section 4, A(3) which states in part,

> The Employer, in consultation with the particular unions involved, 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.

The Postal Service has unilaterally assumed full control of policy decisions , including:

a. The number of cases scheduled
b. The assignment of cases
c. Duration of advanced scheduling
d. Selection of back-up cases
e. Time and place of hearings

The American Postal Workers Union maintains a responsibility for all aspects of the arbitration procedure including prior consultation and joint decisions.

This letter is to advise that effective June 1, 1982 all requests for available dates forwarded to arbitrators must be provided to the union prior to mailing to the appropriate arbitrator.

All correspondence to the arbitrators arranging dates and location of hearings will contain the signature of union and management represen-

tatives. Appropriate letters of acceptance of available dates by arbitrators must likewise be copied to the appropriate union representative and the parties will mutually agree upon the designated time and location of the scheduled hearing.

This is to advise the Postal Service that effective June 1, 1982 the American Postal Workers Union will not recognize schedules of hearing dates arranged in any manner other than described above.

I am available to discuss this issue with appropriate USPS officials and may be reached at 842-4250.

Sincerely,

William Burrus,
General Executive Vice President

WB:mc

cc: Sherry Barber, General Manager
Arbitration Division

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

May 12, 1982

Mr. Moe Biller
General President
American Postal Workers Union
AFL-CIO
817 - 14th Street, NW
Washington, DC 20005

Dear Mr. Biller:

This will respond to Mr. Burrus' April 27 letter (copy enclosed) expressing APWU concerns regarding Article 15, Section 4 A(3).

I suggest that a joint meeting with you and your regional coordinators and our regional general managers would be appropriate in order to fully discuss just what are the problems in connection with the above.

Sincerely,

James C. Gildea
Assistant Postmaster General
Labor Relations Department

Enclosure

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

May 28, 1982

Mr. Moe Biller
General President
American Postal Workers Union,
AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005

Dear Mr. Biller:

This is in reference to recent correspondence that originated with an April 26 letter from Mr. Burrus to Senior Assistant Postmaster General, Joseph F. Morris. As you recall, the letter from Mr. Burrus expressed various APWU concerns which he had with the administrative functioning in scheduling arbitrations.

I initially felt that a joint meeting between the parties would be productive since the parties shared a sincere desire to clean up the arbitration backlog. I further felt that with a full discussion of our differences, we could certainly come to an understanding on procedures.

Since that time, I have been given copies of two letters that are enclosed which lead me to believe that such a proposed meeting would serve no useful purpose. For the moment, I have no further interest in pursuing such a meeting.

Sincerely,

RECEIVED
JUN 1 1982
OFFICE OF
GENERAL PRESIDENT

James C. Gildea
Assistant Postmaster General
Labor Relations Department

Enclosure

cc: Mr. Burrus

817 14TH STREET, N. W., WASHINGTON, D. C. 20005

59C

June 4, 1982

Mr. James C. Gildea
Assistant Postmaster General
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

Dear Mr. Gildea:

This is in response to your most recent correspondence regarding the concerns expressed in Vice President Burrus' letter of April 27, 1982. It is apparent that the two letters referenced have been misunderstood as to their intent and purpose, even though it is obvious that you disagree with their content.

The arbitration process has been agreed to by the parties as a means to resolve our disputes, therefore it is imperative that we make every attempt to administer that process in a manner acceptable to both parties. Misunderstandings involving the procedures ultimately color the entire relationship between us. I believe that any misunderstanding that presently exists, or is perceived as existing, can only be resolved if the parties meet in good faith to discuss the issues. For these reasons I continue to believe that a meeting as you proposed in your letter of May 12th is necessary. I am therefore requesting that such a meeting be arranged at the earliest suitable time.

Sincerely,

Moe Biller,
General President

MB:mc

59D

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

August 23, 1982

Mr. Moe Biller
General President
American Postal Workers Union, AFL-CIO
817 14th Street, N. W.
Washington, D. C. 20005

Dear Mr. Biller:

This is in response to your letters of August 5 and 12 regarding the scheduling of arbitration cases. As I indicated to you in our telephone conversation of August 4, I strongly believe that the framework of collective bargaining is the most preferable means of resolving disputes between the parties. Accordingly, we are willing to consult with the American Postal Workers Union regarding the administrative functions necessary to assure efficient scheduling and hearing of cases by arbitrators at all levels, and also to discuss any other problems relating to the administration of article 15.

As Mr. Burrus has undoubtedly related to you, we have agreed that you and your regional coordinators will meet with me and the Regional General Managers and their Arbitration Branch Managers on September 3 at 9:30 a.m. in room 4841, U. S. Postal Service Headquarters.

A copy of this letter is being transmitted to you at the Fontainebleau Hotel, Miami, Florida, APWU Convention, as well as to your Washington, D.C., office. Additionally, copies of this letter are being sent to Executive Vice President William Burrus at both locations.

Sincerely,

James C. Gildea

James C. Gildea
Assistant Postmaster General
Labor Relations Department

In recognition of the parties joint responsibility for the effective use of arbitration, the parties agree that the respective representatives at the regional level will meet to establish procedures that will provide for:

a. The use of the attached 3 form letters (request, confirmation, scheduling).

b. A procedure utilizing all arbitration dates on a first-in, first-out basis for primary cases while recognizing the need to review assignments to ensure that scheduling is not restricted to specific geographic areas.

c. Assignment of sufficient backup cases to ensure that available dates are not lost. This will include consideration of assigning arbitrators to cities with a heavy backlog of cases and/or the use of a "case docket" for that city and date.

d. The prompt rescheduling of cases delayed as a result of the arbitrator's inability to hear the scheduled case. In those instances where cases are rescheduled as a result of either advocate's request, they will be rescheduled before the original arbitrator.

e. An advanced schedule of some (X) months duration. This will not limit the parties from requesting available dates beyond the (X) month period. In order to limit schedule adjustments, all dates beyond the (X) month period will not be assigned case numbers or locations.

f. A mutual review at the regional level of certified arbitrators on the expedited and regular panels that the parties can agree to upgrade to either the removal or contract panels. These regional recommendations may be either on a temporary or permanent basis.

g. A procedure, i.e. granting LWOP or AL, to prevent unnecessary inconvenience to grievants and witnesses caused by conflict between their scheduled tours of duty and the arbitration schedule.

h. An agreed upon percentage of contract vs. discipline cases scheduled for hearing.

Sherry S. Barber
General Manager
Arbitration Division
Labor Relations Department

William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO