

# Failure to meet standards

**L**ocal managers often attempt to discipline letter carriers for failure to meet standards. Whether called “18 and 8,” “percent to standard,” “demonstrated performance,” or by some other such term, this is never just cause for discipline. NALC and the Postal Service have jointly agreed that failure to meet standards, by itself, is not disciplinable misconduct. Under the terms of a September 3, 1976 Memorandum of Understanding, the *M-39 Handbook* was modified to underscore this point. Section 242.332 now provides that:

No carrier shall be disciplined for failure to meet standards, except in cases of unsatisfactory effort which must be based on documented, unacceptable conduct that led to the carrier’s failure to meet standards.

This principle was further reinforced in the July 11, 1977 Step 4 Settlement M-00386 which states:

Management may not charge or impose discipline upon a carrier merely for failing to meet the 18 and 8 casing standards. Any such charge is insufficient. Under the Memorandum of Understanding of September 3, 1976 [now M-39 § 242.332] the only proper charge for disciplining a carrier is “unsatisfactory effort.” Such a charge must be based on documented, unacceptable conduct which led to the carrier’s failure to meet the 18 and 8 criteria. In such circumstances, **management has the burden of proving** that the carrier was making an “unsatisfactory effort” to establish just cause for any discipline imposed (emphasis added).

Some managers seem to have the mistaken notion that the rules have been changed since the new DOIS programs is “computerized,” more “modern,” more “accurate,” or whatever. We all know that the quantitative data in the DOIS program are often wildly inaccurate and fail to take into account many of the most significant factors affecting office and street times. But this argument is usually pointless and unnecessary since, in fact, **the rules have not changed**. This understanding was confirmed in the July 30, 2001 national level settlement M-01444 which provides the following:

The issue in these grievances is whether or not the Piece Count Recording System (PCRS), Projected Office Street Time (POST), or the Delivery Operations Information System (DOIS) violate the National Agreement. After reviewing this matter, we mutually agreed to settle these grievances as follows: Daily piece counts (PCRS) recorded in accordance with the above-referenced systems (POST or DOIS) will not constitute the sole basis for discipline. However, daily counts recorded in accordance with these procedures may be

used by the parties in conjunction with other management records and procedures to support or refute any performance-related discipline. **This does not change the principle that, pursuant to Section 242.332 of the M-39, “No carrier shall be disciplined for failure to meet standards, except in cases of unsatisfactory effort which must be based on documented, unacceptable conduct that led to the carrier’s failure to meet office standards.”** Furthermore, the pre-arbitration settlement H1N-1N-D 31781, dated October 22, 1985, provides that “there is no set pace at which a carrier must walk and no street standard for walking.” (Emphasis added)

The regional award C-07368 by Arbitrator Denis Nolan, who now serves on our national arbitration panel, is a good example of how arbitrators should apply these principles. He wrote the following:

Finally, and perhaps most importantly, [the] postmaster impermissibly based the suspension solely upon the Grievant’s failure to meet numerical standards. This is but the latest skirmish in the long-running war over standards. No doubt it would be convenient for management to have a simple test to apply to employees suspected of loafing, and perhaps the 18 and 8 standard is a fair test. Whatever that standard’s merits, the parties have agreed not to use it as the basis for discipline.

In [C-3237] national level arbitrator Sylvester Garrett ruled that, because management had unilaterally changed the meaning of the 18 and 8 standard by adjusting the size and configuration of carriers’ cases, it could no longer use the standard for discipline. The parties implemented his award with a Step 4 settlement on July 11, 1977 [M-00386]. That settlement prohibited discipline “merely for failing to meet” the 18 and 8 standard; instead, a supervisor had to charge an employee with “unsatisfactory effort” and to document that charge with specific incidents of unacceptable conduct. The Postal Service later embodied the same requirement in its Handbook M-39, Section 242.332. It is far too late now to ignore those agreements and rules, yet [the] Postmaster cited not a single specific flaw in the suspension letter he sent to the Grievant. If for no other reason, the discipline would have to be overturned because the Postmaster did not even comply with the Postal Service’s own requirements for evaluating an employee’s work. ☒

## CONTRACT ADMINISTRATION UNIT

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## Maximization and withholding

**A**rticle 7, Section 3 contains the National Agreement's main "maximization" language, setting forth management's obligations to create and maintain *full-time regular* letter carrier positions. Most letter carriers work in 200 workyear offices where Article 7.3.A applies. It provides the following:

**Article 7, Section 3.A.** The Employer shall staff all postal installations which have 200 or more workyears of employment in the regular work force as of the date of this Agreement with 88 percent full-time employees in the letter carrier craft.

Whether an installation is classified as a 200 workyear office is determined as of the National Agreement's effective date. The classification does not change during the life of the Agreement. The hours of bargaining-unit employees in the crafts covered by the 1978 National Agreement are counted in making this determination. Although the work hours of six postal crafts are counted to determine classification as a 200 workyear installation, the 88 percent full-time requirement applies to *letter carriers* working at such facilities. Only career letter carriers are included in the 88/12 calculation; casuals are excluded. Full-time regular carriers, including reserve and unassigned regulars, and full-time flexible carriers (see *JCAM* pages 7-9) are counted as "full-time employees." Part-time flexibles and part-time regulars are not counted as full-time.

In order to help monitor compliance with the 88 percent full-time requirement for 200 workyear offices, the Postal Service provides an *On Rolls Complement Report* to NALC on an accounting period basis. This report shows the exact number of full- and part-time employees in all 200 workyear installations.

Although existing full-time flexible carriers may be counted as full-time in measuring compliance with the 88 percent requirement, Arbitrator Mittenthal found that, if an office fell below the required full-time percentage at the same time that a part-time flexible met the criteria for conversion under the terms of the Full-time Flexible Memorandum (see *JCAM*) "the Postal Service must first convert pursuant to the [88] percent staffing requirement and thereafter convert pursuant to the Memorandum." Thus, the conversions to full-time flexible under the memorandum would be in addition to the conversions to full-time regular necessary to bring the office to 88 percent. (Mittenthal, C-09340).

**There is an exception to the requirement that all 200 workyear offices must be staffed with 88 percent full-time employees in the letter carrier craft.** National Arbitrator Mittenthal ruled in C-10343 that an installation may fall below the 88 percentage full-time staffing requirement when full-time positions are being withheld under Article 12.5.B.2. Under that provision, management may withhold positions in an installation for other employees who may be reassigned involuntarily (excessed) under the provisions of Article 12.

Occasionally, Arbitrator Mittenthal's award is misapplied by Postal Service officials. It does not mean that Article 7.3.A is no longer in effect whenever management determines that there is a need to withhold. Rather, it means that withheld full-time positions are counted as if they were filled by full-time employees in determining compliance with the Article 7.3.A full-time staffing requirement. If a 200 workyear installation falls below the 88 percent full-time staffing requirement, branch leaders should not accept a simple statement that the installation is under withholding as a contractually adequate justification. Rather, they should request that the withheld positions be specifically identified. They should then check out the information provided by management and verify that the percentage calculations are accurate.

**The appropriate remedy for violations of Article 7.3.A was specified in a national memorandum of understanding dated April 14, 1989 (M-00920).** The parties agreed that the remedy will be the following:

Any installation with 200 or more man years of employment in the regular workforce which fails to maintain the 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 on the aforementioned, paid the applicable overtime rate.
- 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. ☒

# Reversion

**T**he Contract Administration Unit is acutely aware that resolving interpretive issues at the national level does not necessarily make local problems and contract violations disappear. One of the reasons NALC has devoted so much time and energy to improving our grievance/arbitration system has been to force contract compliance by local managers.

A recurring example of managers' failure to comply with national level settlements involves some area, district or local policies concerning the reversion of vacant duty assignments. The reversion of vacant duty assignments is addressed in Article 41, Section 1.A.1 as follows:

**Article 41.1.A.(in part).** In the Letter Carrier Craft, vacant craft duty assignments shall be posted as follows:

1. A vacant or newly established duty assignment not under consideration for reversion shall be posted within five working days of the day it becomes vacant or is established.

\* \* \*

When a position is under consideration for reversion, the decision to revert or not to revert the position shall be made not later than 30 days after it becomes vacant. If the decision is made not to revert, the assignment must be posted within 30 days of the date it becomes vacant. The Employer shall provide written notice to the Union, at the local level, of the assignments that are being considered for reversion and of the results of such consideration.

In summary, a vacant duty assignment must be posted for bids within five days after it becomes vacant, unless it is under consideration for reversion. In such cases management has a maximum of 30 days after the date the duty assignment is vacated to make the decision to either revert the position or post it for bid.

What management may not do is have a "blanket" policy of considering all vacant routes for reversion rather than posting them within five days. Such a policy would make the normal five day posting requirement in Article 41.1.A.1 inapplicable and meaningless. This issue first arose in a grievance over an area policy originating in Connecticut. In that case management initiated a policy that all vacant routes should be considered for reversion.

Consequently all postings of newly vacant routes were delayed for up to thirty days, even if they were never actually reverted. In a national level Step 4 settlement management agreed that such blanket policies are not permitted. The settlement, M-01389, stated the following:

The issue in the instant grievances involves a local district policy to consider all vacant routes for reversion pursuant to the provisions of Article 41.1.A.1. The parties agreed that a "blanket" policy to consider all vacant routes for reversion prior to posting is inconsistent with the provisions of Article 41.1.A.1. Routes considered for reversion are to be considered on a route by route basis. Accordingly, it was agreed that the Connecticut Vacant Route Policy of December 8, 1998, as well as the March 23, 1999 revised policy, are to be rescinded.

**The settlement in M-01389 should have resolved the problem.** Unfortunately it hasn't. The Contract Administration Unit has recently been receiving more reports of such "blanket" reversion policies from various parts of the country. Either local managers haven't gotten the word yet or they believe that they can ignore the clear instructions from the national parties with impunity. Any such management policy or practice should be immediately grieved and a monetary remedy sought for any specific letter carriers adversely affected.

In such cases branches should also contact their national business agent for assistance and advice. Always remember that local NALC branches serve as the eyes and ears of our business agents. Until such problems are brought to their attention, they will be unable to address and resolve them. This is especially true concerning issues such as this which may originate in district or area policies beyond the jurisdiction of any one branch. ☒

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# Casuals

**A**rticle 7.1.B of the National Agreement establishes the “supplemental work force,” which consists of casual employees. Since Article 1, Section 2 excludes casual employees from the bargaining unit represented by NALC, casuals do not have the contractual protections enjoyed by career bargaining-unit employees. Casual employees receive lower pay than career or transitional carriers and they receive no benefits. Sections 1 through 4 of Article 7.1.B contain specific limitations on the hiring and use of casual employees who perform letter carrier work.

**7.1.B.1 Supplemental Work Force.** The supplemental work force shall be comprised of casual employees. Casual employees are those who may be utilized as a limited term supplemental work force, but may not be employed in lieu of full or part-time employees.

In his August 29, 2001 award C-22465 National Arbitrator Shyam Das held that Article 7.1.B.1 of the National Agreement establishes a separate restriction on the employment of casual employees, in addition to the other restrictions set forth in other paragraphs of Article 7.1.B. The Postal Service may only employ (hire) casual employees to be used as a limited term supplemental work force and not in lieu of (instead of, in place of, or in substitution of) career employees. Generally, casuals are used in circumstances such as heavy workload or leave periods; to accommodate any temporary intermittent service conditions; or in other circumstances where supplemental workforce needs occur. Where the identified need and workload is for other than supplemental employment, the use of career employees is appropriate. Additional information and advice concerning the enforcement of Article 7.1.B.1 can be found in the March 2002 CAU publication *Hiring of Casuals “In Lieu Of” Career Employees*. That publication and Arbitrator Das’ award in C-22465 can both be found in the CAU section of the NALC website at [www.NALC.org](http://www.NALC.org).

**7.1.B.2** During the course of a service week, the Employer will make every effort to insure that qualified and available part-time flexible employees are utilized at the straight-time rate prior to assigning such work to casuals.

This section obligates management to give part-time flexibles working at the straight-time rate a scheduling priority over casual employees. This priority is not absolute. The employer’s obligation may be fulfilled over the course of a “ser-

vice week,” and the part-time flexible employees must be “qualified and available.”

A successful grievance on this issue must show that management scheduled a casual for work which a PTF carrier could have performed instead, and that the PTF carrier worked less than 40 straight-time hours during the service week. Because the contract language addresses the service week rather than any specific day’s assignment, management does not necessarily violate the contract by, for instance, using a casual on a Monday while PTFs are unscheduled. A violation occurs when that assignment causes a PTF who could have performed the Monday work to lose straight-time work hours during the service week. See C-00403, National Arbitrator Gamser.

**7.1.B.3** The number of casuals who may be employed in any period, other than December, shall not exceed 3½% of the total number of employees covered by this Agreement.

**Article 7, Section 1.B.3 restricts the number of casuals to 3.5 percent** of the total number of employees covered by the National Agreement, except during December. The 3.5 percent limit is computed on a nationwide basis and does not apply to any particular postal facility or installation, where the number of casuals may exceed 3.5 percent. NALC monitors the overall casual employee limit at its headquarters in Washington, DC. Thus there is no basis for a local grievance concerning this provision.

**7.1.B.4** Casuals are limited to two (2) ninety (90) day terms of casual employment in a calendar year. In addition to such employment, casuals may be reemployed during the Christmas period for not more than twenty-one (21) days.

Article 7, Section 1.B.4 is generally straight forward and restricts individual casual employees to two 90-day terms per year plus 21 days during the Christmas period.

There are, however, still unresolved issues concerning whether casuals may be used across craft lines or whether casuals who have already worked two 90-day terms in one craft may be worked in another craft during the same calendar year. Branches who have possible grievances concerning these issues should contact their national business agent for further advice and guidance and for the latest information. 

## Hold down assignments

**T**he contract provides a special procedure for exercising seniority to fill temporary vacancies in full-time duty assignments. This procedure, called “opting,” allows carriers to “hold down” duty assignments vacant for five or more days. Full-time reserve letter carriers, full-time flexible letter carriers, unassigned full-time carriers, and part-time flexible carriers may all opt for hold-down assignments. The opting provisions are found in Article 41, Sections 2.B.3, 4 and 5 which provides:

**41.2.B.3.** Full-time reserve letter carriers, and any unassigned full-time letter carriers whose duty assignment has been eliminated in the particular delivery unit, may exercise their preference by use of their seniority for available craft duty assignments of anticipated duration of five (5) days or more in the delivery unit within their bid assignment areas, except where the local past practice provides for a shorter period.

**4.** Part-time flexible letter carriers may exercise their preference by use of their seniority for vacation scheduling and for available full-time craft duty assignments of anticipated duration of five (5) days or more in the delivery unit to which they are assigned.

**5.** A letter carrier who, pursuant to subsections 3 and 4 above, has selected a craft duty assignment by exercise of seniority shall work that duty assignment for its duration.

Vacancies in all full-time Grade 1 letter carrier assignments, including reserve regular assignments, are available for opting. However, not all anticipated temporary vacancies create opting opportunities. Carrier technician positions are not available for opting because they are higher level assignments that are filled under Article 25 of the National Agreement. Auxiliary routes are not available as hold-downs because they are not full-time. Full-time flexible positions are not subject to opting because they are not bid assignments. Vacancies anticipated to last less than five work days need not be filled as hold-downs. However, the anticipated five work days may include a holiday. An opt is not necessarily ended by the end of a service week. Rather, it is ended when the incumbent carrier returns.

Article 41, Section 2.B.5 provides that once an available hold-down position is awarded, the opting employee “shall work that duty assignment for its duration.” This means that employees on hold-downs are entitled to work the regularly scheduled *days* and *the daily hours of duty* of the assignment until the opt ends.

**In the past, the contract’s opting provisions have raised many contentious issues.** NALC has been forced to take grievances concerning the application of these provisions to national level arbitration on four different occasions. Fortunately, the national parties have resolved most of their disputes. Pages 41-9 through 41-15 of the 2004 *Joint Contract Administration Manual (JCAM)* provides a more detailed explanation of how the opting provisions are to be applied. The parties have even agreed, in writing, how violations of the opting provisions are to be remedied. The *JCAM* states that:

Where the record is clear that a PTF was the senior available employee exercising a preference on a qualifying vacancy, but was denied the opt in violation of Article 41.2.B.4, an appropriate remedy would be a “make whole” remedy in which the employee would be compensated for the difference between the number of hours actually worked and the number of hours he/she would have worked had the opt been properly awarded.

In those circumstances in which a PTF worked 40 hours per week during the opting period (or 48 hours in the case of a six day opt), an instructional “cease and desist” resolution would be appropriate. This would also be an appropriate remedy in those circumstances in which a reserve letter carrier or an unassigned letter carrier was denied an opt in violation of Article 41.2.B.3.

In circumstances where the violation is egregious or deliberate or after local management has received previous instructional resolutions on the same issue and it appears that a “cease and desist” remedy is not sufficient to insure future contract compliance, the parties may wish to consider a further, appropriate compensatory remedy to the injured party to emphasize the commitment of the parties to contract compliance. In these circumstances, care should be exercised to insure that the remedy is corrective and not punitive, providing a full explanation of the basis of the remedy.

The National Agreement does not set forth specific procedures for announcing or applying for available vacancies. However, procedures for announcing vacancies and procedures for opting on hold-down assignments may be governed by your local memorandum of understanding provisions, a mutually agreed-upon local policy or local past practice. You should consult with your shop steward if you need more information about how vacancies available for opting are made known in your office. 

## Higher level assignments

**T**he May 2004 Contract Talk column reviewed the opting provisions of Article 41.2.B. Although the language of that provision addresses “available craft duty assignments of anticipated duration of five days or more,” the provision does not actually apply to higher level (Grade 2) letter carrier craft duty assignments (see M-00276). Rather, the filling of temporarily vacant higher level (e.g. carrier technician) assignments is governed by the somewhat similar provisions of Article 25 which provide in relevant part:

**Article 25, Section 4. Higher level details.** Detailing of employees to higher level bargaining unit work in each craft shall be from those eligible, qualified and available employees in each craft in the immediate work area in which the temporarily vacant higher level position exists. However, for details of an anticipated duration of one week (five working days within seven calendar days) or longer to those higher level craft positions enumerated in the craft Article of this Agreement as being permanently filled on the basis of promotion of the senior qualified employee, the senior, qualified, eligible, available employee in the immediate work area in which the temporarily vacant higher level position exists shall be selected.

This means that for a vacancy of less than five working days, management may select any employee from among those who are “eligible, qualified and available” in the immediate work area in which the vacancy occurs. For a vacancy of five working days or more, the “senior qualified, eligible and available” volunteer in the immediate work area must be selected. Revisions to the 2004 *JCAM* make absolutely clear that all qualified Grade 1 letter carriers are eligible to apply for higher level assignments under the provisions of this section. This includes part time flexibles, unassigned and reserve letter carriers and full-time letter carriers who have Grade 1 bid assignments. However, management may never involuntarily assign a letter carrier with a bid assignment to a higher level detail, regardless of the length of the vacancy.

National Arbitrator Snow held in the September 10, 1990 award C-10254 that management may not assign different employees on an “as needed” basis to carry a route on a carrier technician string when a vacancy of five or more days is involved; instead, he held, such vacancies must be filled according to Article 25.

The pre-arbitration settlement M-00431 clarifies that letter carriers voluntarily detailed to temporarily vacant carrier technician positions are not entitled to out-of-schedule pay if the detail results in a schedule change.

The Step 4 settlement M-00902 provides that the following management document, known as the “Brown Memo,” M-00452, is a contractual commitment and remains in effect. The memorandum explains that a replacement employee is entitled to higher level pay when no employee is detailed under the provisions of Article 25, Section 4. Note that most settlements and arbitration awards such as the Brown Memorandum, below, may be understood to apply to Grade 2 carrier technician positions even though they refer to “T-6” positions (see *JCAM* page 25-2).

When a carrier technician (T-6) is absent for an extended period and another employee serves the series of 5 routes assigned to the absent T-6, the replacement employee shall be considered as replacing the T-6, and he shall be paid at the T-6 level of pay for the entire time he serves those routes, whether or not he performs all of the duties of the T-6. When a carrier technician’s absence is of sufficiently brief duration so that his replacement does not serve the full series of routes assigned to the absent T-6, the replacement employee is not entitled to the T-6 level of pay. In addition, when a T-6 employee is on extended absence, but different carriers serve the different routes assigned to the T-6, those replacements are not entitled to the T-6 level of pay. The foregoing should be implemented in a straight-forward and equitable manner. Thus, for example, an employee who has carried an absent T-6 carrier’s routes for four days should not be replaced by another employee on the fifth day merely in order to avoid paying the replacement higher level pay.

Shop stewards should be sure they understand the Brown Memorandum. In many cases management fails to pay replacement employees at the appropriate higher level Grade 2 rate. In other cases, letter carriers may be impermissibly removed from a higher level assignment simply to avoid the higher level pay. Remember that the Postal Service payroll system does not automatically identify detailed employees entitled to higher level pay in such circumstances. Rather, local management must make a manual entry to have the work paid at the appropriate higher level rate. Make sure it does. ☒

## Timeliness matters

**T**he National Agreement gives individuals and the union the ability to challenge management's actions provided that we do so in a timely manner. To ensure that grievances are decided based on the merits of the case and not dismissed due to the failure to meet time limits, everyone should be aware of the specific time limits contained in Article 15, Section 2.

### File a grievance within 14 days.

"An employee or union representative must discuss the grievance with the employee's immediate supervisor within 14 calendar days of when the grievant or the union first learned, or may reasonably have been expected to learn, of its cause. The date of this discussion is the Informal Step A filing date." (see *JCAM* pg. 15-2)

The clock begins the day *after* the event occurred. If a grievant receives a letter of warning on August 1, a grievance should be filed no later than August 15. The time limits are the same whether the union was aware that the letter of warning was issued or not.

### Appeal to Formal Step A—7 days.

"If the parties are unable to resolve the grievance during the Informal Step A meeting the union may file a written appeal to Formal Step A *within 7 calendar days* after the meeting." (*JCAM* pg. 15-3).

Grievances are appealed by completing the top portion (boxes 1-13) of PS Form 8190 and sending it to the installation head or their designee within seven days of the Informal Step A meeting. Only the union has the ability to appeal a case to Formal Step A.

### Formal Step A meeting—7 days.

"The Formal Step A meeting must be held between the installation head or designee and the branch president or designee as soon as possible but no later than 7 calendar days after the installation head receives the Joint Step A Grievance Form (unless the parties agree to an extension)." (*JCAM* pg. 15-5).

The parties are to meet and discuss the grievance within seven days of receipt by the installation head in an attempt to resolve the grievance. A decision is to be rendered at the conclusion of the meeting unless an extension is granted.

### Appeal to Step B—7 days.

"If the grievance is not resolved at Formal Step A, the union may appeal it to Step B within 7 calendar days of the Step A decision date (unless the parties agree to an extension of time for appeal)." (*JCAM* pg. 15-6)

At the conclusion of the Formal Step A meeting, the parties are to complete the lower portion of the PS Form

8190 and exchange all documentation relied upon for their respective positions and sign the bottom of the form. The union has seven days to appeal the grievance to Step B by submitting the completed 8190 with all the supporting documentation as well as any "*additions and corrections*" to management's position. If the union is submitting additions and corrections a copy must be given to management's representative at the Formal Step A at the time of appeal.

### Other limits: Step B decision—14 days.

"The Dispute Resolution Team must make a decision within 14 calendar days..." (*JCAM* pg. 15-8)

### Appeal to arbitration—14 days.

"The national business agent may appeal an impasse grievance to arbitration within 14 calendar days..." (*JCAM* pg. 15-9)

The union is the moving party in the grievance procedure and bears the burden of meeting the time limits of Article 15. Excuses such as, "Management would not meet," or "Management would not make a decision," are not sufficient reasons for not meeting time limits.

Article 15, Section 3.C states, "Failure by the Employer to schedule a meeting or render a decision in any of the Steps of this procedure within the time herein provided (including mutually agreed to extension periods) shall be deemed to move the grievance to the next Step of the grievance-arbitration procedure." This language *does not* move the grievance forward if management fails to act. It allows the union the opportunity to move the case forward. The grievance handler must formally appeal the grievance in accordance with the terms of Article 15. In cases where management fails to issue a timely decision, the time limits for appeal to the next step are counted from the date management's decision was due.

**Extensions.** Extensions of time limits serve a valuable purpose when used properly. The parties have the ability to make use of *mutual* extensions to allow for further investigation or discussions. Remember, to avoid further problems or disputes, agreements to extend time limits should always be in writing and signed by both parties.

The penalty when the grievant or the union is found to have failed to meet the time limits can be severe: "The failure of the employee or the union in Informal Step A, or the union thereafter to meet the prescribed time limits of the Steps of this procedure, including arbitration, shall be considered as a waiver of the grievance." (See Article 15.3.B.)

In grievance handling, timeliness counts. 

## PTF overtime—limits and remedies

**W**hat is the maximum number of hours that the Postal Service may work a PTF letter carrier in a single day? And in a case where management violates that maximum, what is the remedy?

The latter question was the subject of a national-level dispute that the parties settled on August 29, 2002 (M-01485). The arguments in the case revolved around the applicability of the remedy that is available to *full-time employees* who are required to work beyond the contractual limits. Did the remedies for full-timers also apply to part-time flexibles?

Most NALC representatives know that Article 8.5.G of the National Agreement places limits on the daily and weekly hours of *full-time* letter carriers. In 1998 National Arbitrator Carlton Snow limited the remedy for work over 12 hours (or 60 in a service week) to an additional 50 percent of straight-time pay. The *JCAM* at page 8-17 cites Arbitrator Snow's decision and states:

National Arbitrator Snow held in A90N-4A-C 94042668, November 30, 1998 (C-18926) that the October 19, 1988 Memorandum of Understanding (M-00859) provides the exclusive remedy for violations of the 12 and 60 hour work limits in Article 8.5.G.2.

...The remedy of 50 percent of the base hourly straight time rate provided in the Memorandum applies for **each hour** worked in excess of twelve on a service day (excluding December) by a full-time employee.

Arbitrator Snow's decision was based on an October 19, 1988 memorandum of understanding which states in part:

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 parties have also agreed that Arbitrator Snow's award dealt only with full-time employees. The *JCAM* at page 8-18 defines the intent of Article 8, Section 5.G as:

**Maximum hours—12 hour limit.** The overtime limits in Article 8, Section 5.G apply only to full-time regular and full-time flexible employees.

So what rule—if not Article 8.5.G—places a limit on maximum PTF work hours? Daily PTF work hours are lim-

ited by Part 432.32 of the *Employee and Labor Relations Manual (ELM)*, which states:

### 432.32 Maximum Hours Allowed

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

This language limits part-time flexible employees to a total workday of 12 hours including mealtime. So part-time flexible employees may not work more than 11½ hours in a service day.

The *JCAM* explains *ELM* Section 432.32 on page 8-18:

Because this language limits total daily service hours, including work and mealtime, to 12 hours, an employee is effectively limited to 11½ hours per day of work plus a ½-hour meal. However, the *ELM* also permits the collective bargaining agreement to create exceptions to this general rule. The only exception to this rule in the NALC National Agreement is for full-time employees on the overtime desired list or "work assignment" list who, in accordance with Article 8.5.G, "may be required to work up to twelve (12) hours in a day." Since "work", within the meaning of Article 8.5.G does not include mealtime, the "total hours of daily service" for carriers on the overtime desired list may extend over a period of 12½ consecutive hours. This exception does not apply to full-time employees who are not on the overtime desired list.

With this background, the national parties met to discuss resolving the dispute concerning the remedy for violations of the limit on daily PTF work hours. They were aware that local parties—both union and management—have sometimes confused full-time and PTF work hour limits. In cases involving PTF hours they have applied the Snow award remedy of an extra 50 percent of straight time for each hour worked. The national parties agreed that this remedy applies only to violations of Article 8.5.G, which regulates full-time hours.

The parties decided to settle the dispute in M-01485 by agreeing that there is no nationally-set remedy for violations of maximum daily PTF work hours. Rather, grievances involving part-time flexible employees working over 11½ hours may be remedied in whatever manner the local parties see fit. 

## Leave-computation errors

**O**n February 12, 2004, the United States Postal Service announced a new policy concerning the correction of leave-computation errors. Leave-computation errors occur due to a number of common mistakes. For instance, an employee may have been in a Leave Without Pay (LWOP) status for over six months in a service year, or military time that was erroneously calculated. Prior to this new memorandum, collection of erroneous credit of annual leave was accomplished by reducing the employee's leave balance.

In the memorandum (M-01515) the Postal Service significantly changed the above policy. The new policy is contained in SOP 56, which was established in February 2004. When a question of proper annual leave computation is raised, the Postal Service Personnel Department determines the root cause for the erroneous leave computation.

**Remember that such errors may in some cases have** caused an employee to receive less annual leave than they are entitled. In those cases, management will credit the employee's annual leave with the proper number of hours the employee should have earned.

More often the Postal Service will find that the employee has used more annual leave than they actually earned. In that case, the Eagan Accounting Service Center (ASC) will determine when and for how long the error took place.

If the error continued for three or more years prior to the time the error was corrected, the indebtedness incurred will be waived in its entirety. If, however, the error took place within the past three years, Eagan ASC will convert the erroneous leave hours to a dollar amount based on the rate of the annual leave most recently used. Eagan ASC will then mail an accounts receivable invoice to the appropriate installation head.

**The installation head must prepare a letter of demand and** present it to the employee along with the accounts receivable invoice. Part 361.1 of the F-1 Handbook, *Managing Postal Funds*, requires that any letter of demand given to a bargaining unit employee must include the

employee's right to file a grievance. The installation head must also provide the employee with the following options:

- 1. Repay the amount due in full via check or money order.**
- 2. Repay the amount due in increments via automatic salary deduction by either:**

- Paying at 15 percent of disposable income or 20 percent of gross income each pay period; or
- If payment of the amount due at the rate of 15 percent of disposable income would result in severe financial hardship, requesting an alternative offset schedule and paying the amount due accordingly.

- 3. Repay the debt making use of reduction of his or her current annual leave balance by either:**

- Reducing his or her current annual leave balance by the full number of hours indebted, provided he or she can do so and still have at least 80 hours remaining in his or her earned annual leave balance; or
- Reducing his or her current annual leave balance by the number of hours available over and above the 80 hours that must remain in his or her earned annual leave balance and paying the remaining debt either:
  - Via check or money order; or
  - Via automatic salary deduction at 15 percent of disposable income, or 20 percent of gross income each pay period; or at an alternative offset schedule if 15 percent would result in severe financial hardship.

Note: Repayment making use of reduction of leave balance by an amount other than that shown in the options above is not an available option.

**Employees who are faced with paying back annual leave** may also choose to file a grievance challenging management. Any employee considering such a challenge should file a waiver of erroneous payment as cited in Part 437 of the *Employee and Labor Relations Manual* (ELM).

A detailed explanation of filing a waiver is contained in the Fall 2004 issue of *The Activist*. Remember, management should not collect any money due until the grievance has been resolved.

If you have any questions concerning this issue, please contact your national business agent. ☒

# Employee identification number —PostalEASE

**A**s most of you know, public agencies and private sector companies are taking steps to protect employee information under their control. In today's environment, computer systems and electronic records are protected with security software and operating system controls, including log-on and password identifications, firewalls, terminal and use identifications, and file management. Online data transmissions are protected by encryption.

To better serve its employees the Postal Service has automated many of its employee information resources. Automating employee information resources has enabled the Postal Service to more effectively and securely manage access to employee information resources.

The Postal Service started using eight-digit employee identification numbers (EIN) to replace Social Security numbers (SSN) on employee earning statements beginning pay period 14-2003 (July 3, 2003). Employee identification numbers are eight digit numbers randomly assigned to current employees. This ensures that employees who work side-by-side and/or their spouses do not have sequentially numbered EINs.

It is planned that all postal employees will use their EIN for most, if not all, employee business-related access. The switch to the EIN will be gradual and will eventually lead to the EIN replacing the SSNs in many postal systems (hard copy and electronic).

Some of the systems that will use the EINs are the Time and Attendance System (TACS), Resource Management Database (RMD), and enterprise Resource Management System (eRMS). Access to these and similar records should be limited to authorized personnel with a business need to know.

**NALC received a notice dated September 3, 2004, from the Postal Service which advised as follows:**

As a matter of general interest, the Postal Service is continuing to convert the use of Social Security numbers (SSN) in existing systems to the employee identification number (EIN). Beginning September 15, 2004, employees will replace their SSN with their EIN when logging into the PostalEASE self service system on the web and when calling the PostalEASE toll-free number.

All postal employees should have received correspondence advising them that they will have to use their EIN when logging into PostalEASE. Below is an excerpt:

The Postal Service is committed to protecting your personal information, including sensitive information like your Social Security number (SSN). As part of this effort, starting September 29, 2004, you will replace your SSN with your employee ID when logging into the PostalEASE employee self-service system on the web or when you call PostalEASE toll-free. You will need to enter both your employee ID—all 8 digits even if it begins with a zero—and your USPS personal identification number (PIN) to access PostalEASE. (Your USPS PIN is not changing.)

This change helps safeguard your SSN by reducing its exposure on printed documents and other media. This improves the protection of your privacy and is in keeping with the Privacy Act. It is also in keeping with best industry practices, as companies are moving away from using SSNs as identifiers for customers and employees.

Human Resources created a unique 8-digit employee ID for every employee. Since 2003 this number has been printed on earnings statements. So if you want to use PostalEASE and you can't remember your employee ID, it's easy to find—just take a look at the top of your earnings statement—it's the 8-digit number printed just above the words 'Employee ID.'

For your convenience, your employee ID is also included on the upper right side of this letter. It is important that you remember your employee ID for PostalEASE web access and other postal applications.

New Handbook AS-353, *Guide to Privacy and the Freedom of Information Act*, has portions of policy that were previously found in subchapter 35 (Records and Release of Information) and the Appendix (Privacy Act Systems of Records) of the *Administrative Support Manual (ASM)*. The AS-353 provides direction and guidance for Postal Service employees, suppliers or other authorized users with access to Postal Service records and information resources. The AS-353 also provides direction and guidance for customers, employees, suppliers, or other individuals on understanding how their information is collected, maintained, used, disclosed, and safeguarded. You can find the AS-353 on NALC's website at: [www.nalc.org/department/cau/pdf/manuals/AS-353.pdf](http://www.nalc.org/department/cau/pdf/manuals/AS-353.pdf). ☒

# Time to think about vacation bidding

**T**he 2005 leave year is upon us and the process for bidding annual leave should be occurring in your local now or in the near future. The *JCAM* establishes the basic ground rules for vacation planning. Article 10, Section 3.A establishes a nationwide program for vacation planning for employees with the emphasis on the choice vacation period. Article 10, Section 3.B states that care should be exercised to assure that no employee is required to forfeit any part of such employee's annual leave. The parties agree in Article 10, Section 3.C that the duration of the choice vacation period(s) in all postal installations shall be determined pursuant to local implementation procedures.

**As of November 1, your office should have publicized on bulletin boards or by other appropriate means the beginning date of the new annual leave year.** This date is the first day of the first full pay period in the new calendar year. If your Local Memorandum of Understanding (LMOU) provides for a different date or different notification method, then your LMOU is controlling. It is common for many branches to fine-tune vacation planning through provisions negotiated in their LMOU. Branches without specific LMOU language should rely on Article 10 of the National Agreement and past practice. Additional annual leave provisions can also be found in Section 512 of the *Employee and Labor Relations Manual (ELM)*. Article 10, Section 4.C allows the parties to establish a procedure for choosing annual leave in other than the choice period. The *JCAM* states in relevant part:

**Applying for annual leave outside choice period.** The provisions of this section should be read in conjunction with Article 10, Sections 3.A and 3.D.4 and any applicable LMOU provisions established pursuant to Article 30, Section B.12. The LMOU may provide for two different kinds of leave rules under Article 30.B.12:

**(a) Selections outside the choice period.** Many LMOUs have established a second round of bidding immediately following the first, enabling carriers to make advance vacation selections during times *outside* the choice vacation period (or during any remaining time during the choice period). (Any LMOU provision that allows employees to ignore the choice period and make their initial selection of leave from the non-choice period is not permitted; a national arbitration award by Mittenthal, HIC-NA-C-59, dated January 29, 1986 (C-05670), held that such provisions are in conflict or inconsistent with the National Agreement.)

**(b) Other requests for annual leave.** In addition, a LMOU may specify rules governing other requests for annual leave, made as the need arises throughout the year rather than through the annual vacation bidding process. For example, a carrier might win tickets to a World Series game the following week and request leave to attend. A typical LMOU might specify that such leave requests must be made prior to the posting of the next week's schedule. It also might specify how long management has to reply to such requests, set forth procedures for handling daily leave, and specify priorities—by seniority or first-come, first-served—for both advance and daily requests for annual leave.

Where LMOU provisions do not cover rules concerning annual leave of this type, *ELM* Section 512.61(a) provides:

For all regular employees, both full-time and part-time, vacation leave is granted when requested—to the extent practicable.

With the varying degrees that LMOUs address vacation planning it is a good idea for all members to become familiar with the provisions of not only your LMOU but Article 10 and Article 30 as well. The more familiar you are with the workings of your LMOU the better position you are in to defend its meaning. Oftentimes differences occur when a new supervisor or new postmaster attempts to apply a personal interpretation of the LMOU's annual leave bidding process. Branch leaders are encouraged to maintain copies of the current LMOU. The CAU strongly recommends that branches retain all old LMOUs in addition to all notes from past meetings with management. These documents become invaluable in case a dispute arises with regard to the LMOU leave provisions. In addition, it's a good practice to send a copy of your current LMOU to your National Business Agent for safekeeping. If you can't find a current copy of your LMOU, contact the National Business Agent.

Finally, Article 10, Section 4.D requires that management honor all advance commitments of annual leave except in serious emergency situations. Inadequate staffing is not a serious emergency situation. The *JCAM* reaffirms this position stating:

**Honoring advance commitments for annual leave.** This section requires management to honor annual leave approved in advance, in nearly all circumstances.

Know your rights and enjoy your benefits. Happy vacation planning! 