

**AMERICAN POSTAL WORKERS UNION
AFL-CIO**

MOE BILLER, PRESIDENT

WORKSHOP #7

ADVANCED SHOP STEWARD TRAINING

U. S. POSTAL SERVICE				ARTICLE XV
LABOR RELATIONS REPORTER				SECTION 1 and 2
1978 NATIONAL AGREEMENT				PARAGRAPH
ISSUE NO. 1	DATE 9/20/79	PAGES 13	SUPERSEDES: ISSUE NO.	TRANSMITTAL LETTER NO. 2-78
			PAGE(S)	

SUBJECT: Questions and Answers Relating to Article XV
of the 1978 National Agreement.

This issue contains questions raised during the field presentation of the National Training Program for Article XV of the 1978 National Agreement. The associated responses are to be considered National level policy.

1. Question: In the definition of a grievance, what is the meaning of "related to wages, hours, and conditions of employment"?

Answer: This clause gives the very broadest parameters in defining what a grievance may encompass. All aspects of wages such as rates, levels, cost of living adjustments, step increases, protected salary rates, etc.; all aspects bearing on work hours, overtime hours, out-of-schedule hours, etc.; and all situations bearing on conditions of employment such as, qualifications for promotion, environmental conditions, eligibility for overtime work, work rules, uniform dress, etc., just to mention a few.

2. Question: Who may file a grievance at Step 1?

Answer: An employee may file a grievance at Step 1. If an employee files a grievance at Step 1, the employee must be present at the Step 1 meeting with the immediate supervisor. In addition, the Union may file a grievance at Step 1, either on behalf of an employee, on behalf of more than one employee or in its own right. If the Union files a grievance on behalf of an employee, the Union determines if the employee's presence is necessary at the Step 1 meeting. If the Union files a grievance on behalf of more than one employee, or in its own right, the steward or Union representative will be the only person to meet with the supervisor at Step 1.

3. Question: May a newly-hired career employee file a grievance during the 90 day probationary period?

Answer: Yes. The only prohibition against a probationary employee filing a grievance is when the Employer exercises its discretion to separate the employee during the probationary period. In such situations, the probationary employee does not have access to the grievance procedure. However, probationary employees do have the right to file grievances in all other situations where a complaint is related to wages, hours, and conditions of employment.

4. Question: May a casual employee file a grievance under Article XV of the 1978 National Agreement?

Answer: No. Casual employees are in the supplemental work force and the provisions of Article I exclude employees in the supplemental work force from the provisions of the National Agreement, including representation rights in Articles XV and XVII.

5. Question: May an employee be aggrieved personally about a situation which occurs when he is not present physically, at the work location?

Answer: Yes, the occurrence of any situation related to wages, hours and conditions of employment which provokes the dissatisfaction of an employee may be the basis for the employee's complaint.

6. Question: Does an employee's request to discuss a problem with a supervisor constitute filing a grievance?

Answer: Not necessarily. Part of every supervisor's daily responsibilities is to respond to the needs of employees. The attentive supervisor who not only hears what is being said, but also "listens" to what is said, should be able to ascertain whether a grievance is being filed. If there is any doubt as to the employee's intent, the supervisor should inquire as to whether a grievance is being filed.

7. Question: Why must an employee or the Union initiate a grievance with the immediate supervisor?

Answer: The intent of any worthwhile grievance procedure is to resolve problems at the lowest possible level in the work environment. This is not to say that the immediate supervisor will always have an answer or a resolution readily available when a grievance is filed. However, the procedures provide ample latitude for the supervisor to investigate the problem, determine the facts and provide a responsible answer to the complaint.

8. Question: Can we require employees with the same complaint to solicit the Union to file a grievance on behalf of the group?

Answer: No. Each employee is entitled by contract, to file a grievance individually. There is no prohibition against advising employees of available avenues in the contract providing for the expeditious handling of multiple grievances, but we are prohibited from becoming involved in Union business regarding how grievances will be filed, i.e., individually or group.

9. Question: Can we deny a Union's request to file multiple grievances on behalf of individual employees when the situation involves the same complaint?

Answer: No. Each employee so affected, is entitled, by contract, to file a grievance when a complaint evolves which is related to wages, hours, and conditions of employment. New language in Step 3(f) of the 1978 National Agreement provides for handling such situations when appealed to Step 3. When this occurs at Steps 1 and 2, every effort should be made to apprise the Union of the advantage of raising the issue as a Union grievance and identifying, by name, the employees who are impacted by the complaint.

10. Question: If the Union files a grievance on behalf of an employee, who is the appropriate supervisor to discuss the grievance?

Answer: The supervisor who discusses the Step 1 grievance in this situation is the supervisor of the employee who the Union is representing.

11. Question: Must an employee be advised of his right to be represented by a steward or Union representative at the Step 1 meeting?

Answer: There is no contractual obligation to advise an employee of his right to be represented at the Step 1 meeting.

12. Question: Who is paid for time spent at the Step 1 meeting?

Answer: As provided in Article XVII on page 52 of the National Agreement, the aggrieved employee and one Union steward, if requested by the aggrieved, will be paid their straight time rate of pay for time actually spent in grievance handling, including investigation and meetings with the Employer. This applies only if the time spent is part of the grievant's and steward's regular work day.

13. Question: If a Step 1 meeting extends beyond an employee's regular work day, is the employee compensated for the time in excess of the regular tour?

Answer: No. The contract provides for payment to an employee for time spent in the Step 1 discussion, which occurs during the employee's and the steward's regular work day.

14. Question: Must the Step 1 meeting be held on the clock?

Answer: While the contract language does not specifically state that the Step 1 meeting must be on the clock, generally such meetings will be on the clock. There may be unusual circumstances, however, which would persuade the parties to hold the Step 1 meeting during other than the employee's and the steward's regular work day. Such a decision would depend totally on the

circumstances and the reasonableness of such a request. If a meeting is held off the clock, the grievant and/or steward or Union representative are not entitled to any compensation.

15. Question: What does a supervisor do when the installation head's instructions are the subject of a grievance?

Answer: The supervisor should investigate the facts of the grievance, obtain the rationale for the instructions and discuss the instructions as they relate to the grievance with his/her supervisor before a decision is rendered. The supervisor should not "automatically" respond to the grievance giving a denial; particularly where the issue may be clouded by different or unusual circumstances. Generally, installation heads issue instructions in a broad context. The supervisor has the authority to settle the grievance if it has merit. This should be accomplished on a well-founded and/or reasonable basis. The non-precedential nature of the decision should assist substantially in this regard. Remember, the intent of the procedure is to resolve problems at the lowest level possible.

16. Question: Can a Step 1 resolution of a grievance be used by anyone at any time or at any point in the grievance procedure?

Answer: No. The contract language is explicit in providing that: "no resolution reached as a result of such discussion shall be a precedent for any purpose".

17. Question: How extensive should the "reasons" be for the Step 1 decision?

Answer: When verbally expressing the basis for a Step 1 decision, the supervisor should set forth the reasons in sufficient detail to assure that the grievant and/or the Union representative are aware of the supervisor's understanding of the complaint and clearly comprehend the meaning of the stated conclusion. The supervisor should be persuasive so that grievances which do not have merit and are denied at Step 1 are not appealed to Step 2, automatically.

18. Question: If an employee is represented by a Union steward during the Step 1 discussion, to whom is the Step 1 decision issued?

Answer: As the Union is the moving party in making any appeal from the Step 1 decision, the supervisor's Step 1 oral decision should be issued to the Union steward. If no Union representation was requested, the decision is issued to the grieving employee.

19. Question: Should the supervisor at Step 1 keep notes of the details of the grievance, the Step 1 discussion and the Step 1 decision?

Answer: There is no contractual requirement for the Step 1 supervisor to record the proceedings at that step. Supervisors should bear in mind, however, that in the event of any appeal to Step 2, they will be responsible for providing the input concerning the Step 1 proceedings.

20. Question: What happens to the grievance if the supervisor fails to render a decision within five (5) days?

Answer: Where the supervisor fails to issue the Step 1 decision within five (5) days, and no extension of this time limit was mutually agreed to, the grievance may be moved to the next step of the procedure, if the Union so desires. The Union is entitled to appeal an adverse decision to Step 2 within ten (10) days after receipt of the supervisor's decision. Except in rare instances, there should be no excuse for failing to issue the Step 1 decision in a timely fashion, or seeking agreement to extend the time limits, when necessary.

21. Question: What does the supervisor's initials confirm on the standard grievance form?

Answer: The supervisor's initials on the standard grievance form confirms only the date of the Step 1 decision. They do not acknowledge the accuracy of any alleged facts or conclusions regarding the grievance. The standard grievance form should be completed sufficiently to identify the grievance involved before the

supervisor initials the form. The steward is not precluded from including additional information on the standard grievance form after obtaining the supervisor's initials in preparation for appealing the grievance to Step 2.

22. Question: Can the Step 1 supervisor refuse to initial a standard grievance form which identifies the grievance and includes the proper Step 1 decision date?

Answer: No. The contractual language is explicit in that the supervisor "shall" initial the form when so requested.

23. Question: Is the steward allowed reasonable time on the clock to complete the standard grievance form?

Answer: Yes.

24. Question: In post offices of twenty or less employees, who is the Step 2 official?

Answer: In post offices of twenty or less bargaining unit employees, excluding rural carriers, a management official from outside the installation will be designated as the Step 2 official. The intent is to have the Step 2 official represent a higher organizational level than the associate post office.

25. Question: When is the Union notified of the identity of the Step 2 official for post offices of twenty or less bargaining unit employees?

Answer: The Union may be notified at the time an individual grievance is filed or the Step 2 official may be designated for all grievances henceforth.

26. Question: Are the grievant and the steward paid for travel time to attend a Step 2 meeting?

Answer: No.

27. Question: Are witnesses paid for travel time to attend the Step 2 meeting?

Answer: Yes. Witnesses are compensated on a no-loss, no-gain basis as long as the time spent is a part of their regular work day.

28. Question: What is the Step 1 supervisor's role when an appeal has been filed at Step 2?

Answer: The Step 1 supervisor should forward to the Step 2 official a complete and detailed explanation of the Step 1 proceedings, making absolutely clear the basis for the decision rendered. All material and relevant documents pertinent to the grievance should accompany the report to the Step 2 official.

29. Question: As long as the Step 2 official is located at the installation level, why does the Step 1 supervisor have to furnish an explanation?

Answer: The Step 1 proceedings are conducted on an informal basis and the Step 1 supervisor is the only management official involved in the discussion. At the time of the Step 2 appeal, the Step 1 official is the only management person fully conversant with the issues involved in the complaint, the position of the employee and/or the Union, the demeanor of the parties, the documents and records pertinent to the grievance and the basis for the decision rendered. In order to avoid the necessity for starting at the beginning, the Step 2 official should only have to review what occurred at the Step 1 proceedings, as reported by the supervisor at that level, and perform whatever minimum additional investigation is required before scheduling the Step 2 meeting. If the report from Step 1 is clear, concise and complete, it should greatly enhance the processing at Step 2.

30. Question: What should management's position be if a Standard Grievance Form is not used by the Union when appealing to Step 2?

Answer: Reasonableness should be exercised in such circumstances. While the language in the contract is clear in stating that an appeal to Step 2 "shall be made by completing a standard grievance form", there could be acceptable reasons why the form was not used; such as depletion of the supply of forms. As no firm requirements have been set for "supply and demand", such a reason could be acceptable. Remember, a timely appeal clarifies intent. This does not minimize the Union's obligation to comply with the terms of the contract, but merely emphasizes the need to determine why a standard grievance form was not used in a given situation. However, before the Step 2 processing is finalized, the standard grievance form must be completed.

31. Question: If the Union fails to set forth all the information referred to in the contract in submitting an appeal to Step 2, is the appeal procedurally defective?

Answer: The fact of a timely appeal makes the intent of the Union clear; i.e., the intent to appeal the Step 1 decision. The reasons for failure to set forth complete details is subject to argument and could be based on many factors. Timely appeals are not to be rejected on procedural grounds in such circumstances. Rather, the shortcomings should be cleared up during the Step 2 processing. However, no Step 2 decision should be issued until these shortcomings are cured. This means making the Standard Grievance Form complete.

32. Question: Is the grievant allowed to attend the Step 2 meeting?

Answer: Yes. The necessity of the presence of a grievant at a Step 2 meeting is determined by the Union. The grievant will be compensated for the time spent at the meeting excluding travel time to and from the meeting, provided such time was part of the employee's regular schedule.

33. Question: Does the grievant count as a witness at the Step 2 meeting?

Answer: No.

34. Question: Can a witness remain at the Step 2 meeting for the entire meeting?

Answer: A witness will remain at the Step 2 meeting only for the time necessary to provide information and answer questions. Once both parties are finished with the witness, the witness will be dismissed and returned to the work location provided the witness' tour of duty has not been completed.

35. Question: If a dispute exists regarding the presence of a witness at Step 2, how is that issue resolved?

Answer: Except in discharge cases, where the parties can unilaterally present a maximum of two (2) witnesses, there must be mutual agreement by the parties in order for a witness to be present at Step 2. The testimony of a witness may be necessary in order to develop fully the facts and to avoid a possible remand from Step 3.

36. Question: Is there a remand function planned from Step 2 to Step 1 for grievances requiring further investigation?

Answer: No. For the most part, Step 1 and Step 2 will be located in the same installation. The Step 2 official will have the necessary resources available, including contact with the Step 1 official, for developing and compiling whatever necessary information is required during the Step 2 processing.

37. Question: If the Union requests copies of management's supporting documentation in a grievance case, can such a request be refused?

Answer: No. The National Labor Relations Act and the provisions set forth in Article XVII and Article XXXI require that the Postal Service honor such requests. Article XXXI further provides that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information. By letter of intent during the 1978 negotiations, the USPS

agreed that the charges for such information will not be greater than the charges imposed for the release of information under the Freedom of Information Act (Part 265 of the Postal Service Manual)

38. Question: How extensive must a Step 2 written decision be?

Answer: The 1978 National Agreement sets forth new requirements to be met when issuing the Step 2 written decision denying a grievance. These requirements include management's full statement of the facts, the contractual provisions involved and detailed reasons for the denial. These should be set forth with sufficient clarity to reasonably assure that the issues involved and the basis for decision will be clearly understood.

The statement of facts should reflect management's understanding of what the grievance is about. The contractual provisions involved should be clear as to what part of the National Agreement is allegedly violated. (Example: A complaint involving assignment of overtime from the overtime desired list should show the alleged violation of Article VIII, Section 5, plus, the applicable paragraph(s) under Section 5). Detailed reasons for the denial should contain sufficient clarity for a reasonable mind to clearly understand the basis for denying the grievance.

39. Question: Is the steward allowed a reasonable amount of time on the clock to write a Union statement of correction and additions to the Step 2 decision?

Answer: Yes. The statement is part of the Step 2 process.

40. Question: Is the Step 2 official precluded from responding or commenting on any rebuttal statement submitted by the Union?

Answer: No. The Step 2 official should address written comments to management on rebuttal statements from the Union when forwarding a case which has been appealed to Step 3.

41. Question: Can the Union bypass Step 3 and Step 4 and proceed direct to arbitration from Step 2?

Answer: No. While this was permissive under the 1975 National Agreement, that provision has been eliminated from the 1978 National Agreement.

42. Question: Is the Union provided time on the clock to write an appeal to Step 3?

Answer: No. The contract does not provide time on the clock for processing grievances, except at Steps 1 and 2.

43. Question: If the Employer at Step 3 considers a grievance to be procedurally defective, can it be remanded to Step 2 for additional processing?

Answer: Not on a unilateral basis. Article XV provides for mutual agreement to remand a case to Step 2.

44. Question: If information is withheld by the Union at Step 2 and it is introduced at Step 3, will that information be considered?

Answer: Normally, the grievance will be remanded to Step 2 for further consideration if this should occur. The intent is to obtain all relevant facts at the early stages of the procedure. The remand function from Step 3 to Step 2 is designed to insure that this intent is implemented.

45. Question: If a representative grievance is remanded to Step 2 by mutual agreement, what happens to the cases at Step 3 which are associated with that grievance?

Answer: The associated cases should be retained at Step 3 until disposition is made on the remanded case. If the issue in the representative case is settled at Step 2, the cases held at Step 3 should then be returned to Step 2 to be disposed of in accordance with the settlement reached at that level. If no settlement is reached

and the Union appeals the Step 2 decision on the remanded representative case to Step 3, disposition of the representative case and the associated cases will depend on the processing at Step 3.

46. Question: Can a Step 3 decision be used as a precedent for resolving other grievances?

Answer: Yes. Unlike the restrictions in Steps 1 and 2, there is no contractual prohibition against using the Step 3 decision as precedent.

47. Question: Can the Union proceed directly to arbitration from Step 3 when it disagrees with management's statement in the decision that the grievance contains a contract interpretative issue?

Answer: No. Such disagreement should appropriately be part of an appeal to Step 4. Conversely, if management's position that no contract interpretative issue is involved is disputed by the Union, the appropriate avenue of appeal is also to Step 4. An appeal from Step 3 directly to arbitration is proper only when the parties agree that no contract interpretative issue is involved.

48. Question: Is the grievant allowed to attend a Step 3 meeting?

Answer: No.

U.S. POSTAL SERVICE LABOR RELATIONS REPORTER 1978 NATIONAL AGREEMENT				ARTICLE XVII
				SECTION 4
				PARAGRAPH 1 & 2
ISSUE NO	DATE	PAGES	SUPERSEDES	TRANSMITTAL LETTER
36	1/16/80	1	ISSUE NO PAGE(S)	NO 4-78

SUBJECT: PAYMENT OF UNION STEWARDS FOR THE TIME SPENT IN WRITING APPEALS TO STEP 3 OF THE GRIEVANCE PROCEDURE

In a decision dated December 10, 1979, National Arbitrator Richard Mittenthal concluded that the term "grievance handling", as set forth in Article XVII, Section 4, was intended to include a broader concept than just the work of investigation, meetings with the Employer and writing a grievance. He held that writing an appeal to Step 3 "involved Step 2 grievance handling" and that the time spent on this paper work by a Union steward was compensable under Article XVII, Section 4.

This interpretation cancels and supersedes the policy stated in response to Question 42 in LLR Issue No. 1 dated 9/20/79.

Reference Material:

Cases A8-E-0021
A8-E-0022

Cross Reference:

Article XV,
Section 2, Steps 2
and 3

REGIONAL ARBITRATION PANEL

In the Matter of Arbitration)
)
 between) Grievant: Ronnie E. Davis
)
United States Postal Service) Post Office: Houston, TX
)
 and) Case No: G94C-1G-D 97031224
)
American Postal Workers Union)

Before: Patricia S. Plant, Arbitrator

Appearances:

For the Postal Service: Beverly Demery, Labor Relations Specialist

For the Union: Terry R. Finkle, Clerk Craft Director

Place of Hearing: 1002 Washington Street, Houston, TX

Date of Hearing(s): July 24, 1997

Date of Post Hearing Briefs: timely filed

Date of Award: October 8, 1997

Relevant Contract Provisions: National Agreement Article(s) 15, 28, 19, 37

Contract Year: 1994-1998

Type of Grievance: Discipline

Award Summary: This Arbitrator reasons that while the Union's argument is the proper one to raise in its advocacy in the instant case, the timing of the raising, is a violation of Article 15. The same concerns with regard to Article 15 apply to the Union's introduction of Article 37. While a proper one to raise in its advocacy in the instant case, the timing of the Union's introduction of the argument is a violation of Article 15. With regard to the excerpt from the ELM, that excerpt rests on the foundation that could have been laid had the Union argued through the grievance process the same arguments it presented at the arbitration hearing. This case is not lost through the wrong arguments; this case is lost for failure to make these appropriate arguments at the proper steps of the grievance process.

Patricia S. Plant, Arbitrator

October 8, 1997

REGULAR ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION

BETWEEN

UNITED STATES POSTAL SERVICE

AND

AMERICAN POSTAL WORKERS UNION,
AFL-CIO

) GRIEVANT: UNDERWOOD
) CASE NO:H94C-1H-97029146
)

) APWU NO: NONE SUPPLIED
)

) POST OFFICE: FORT
) LAUDERDALE, FLORIDA
)

BEFORE: LOUIS V. BALDOVIN, JR., ARBITRATOR

APPEARANCES:

FOR THE POSTAL SERVICE: LUIS CADAVID, ADVOCATE
FOR APWU: ALLEN MOHL, ADVOCATE
PLACE OF HEARING: FORT LAUDERDALE, FLORIDA
DATE OF HEARING: SEPTEMBER 9, 1997
DATE HEARING DECLARED CLOSED: SEPTEMBER 9, 1997
DATE OF AWARD: OCTOBER 15, 1997
CONTRACT PROVISIONS: ARTICLE 2,15,16,19,30,37
CONTRACT YEAR: 1994-98 TYPE OF GRIEVANCE: REMOVAL

AWARD SUMMARY

THE GRIEVANCE IS DENIED. THE RECORD EVIDENCE DEMONSTRATES THAT THE SERVICE HAD JUST CAUSE TO REMOVE GRIEVANT FOR UNSATISFACTORY ATTENDANCE. GRIEVANT ALTHOUGH GIVEN THE OPPORTUNITY TO SUBMIT DOCUMENTATION IN SUPPORT OF 88 HOURS OF CLAIMED SICK LEAVE DID NOT DO SO STATING HE HAD NONE AND ALSO ACKNOWLEDGED HIS ABSENCE WAS NOT FMLA RELATED. CONSEQUENTLY HE WAS CHARGED AWOL FROM 7-24 TO 8-7-96 (88 HOURS). ALMOST TWO MONTHS LATTER DURING THE STEP 2 PROCESS THE DOCUMENTATION HE SUBMITTED WAS GROSSLY UNTIMELY AS AN FMLA CLAIM AND DID NOT COVER HIS AWOL FROM 7-24 TO 8-1-96.

Louis V. Baldwin, Jr.
LOUIS V. BALDOVIN, JR., ARBITRATOR

6

Attachment # 1



ARTICLE	8
SECTION	5
CASE	AB-N-2476
DATE	
BY	

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

January 13, 1975

Mr. Francis S. Filbey
General President
American Postal Workers Union,
AFL-CIO
817 - 14th Street, N. W.
Washington, DC 20005

Re: Arbitration Case No.
AB-N-2476

Dear Mr. Filbey: .

This letter sets forth our understanding of the agreement reached on January 8, 1975, settling Arbitration Case No. AB-N-2476. The underlying grievance involves the proper interpretation of Article VIII, Section 5, of the 1973 National Agreement when employees represented by the American Postal Workers Union, AFL-CIO, having their names on the "Overtime Desired" list, are improperly passed over by management in the selection for overtime work assignments. Agreement was reached to settle that grievance on the following basis:

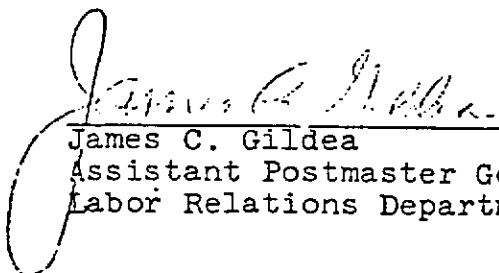
1. When, for any reason, an employee on the "Overtime Desired" list, who has the necessary skills and who is available, is improperly passed over and another employee on the list is selected for overtime work out of rotation, the following shall apply:
 - (a) An employee who was passed over shall, within ninety (90) days of the date the error is discovered, be given a similar make-up overtime opportunity for which he has the necessary skills;

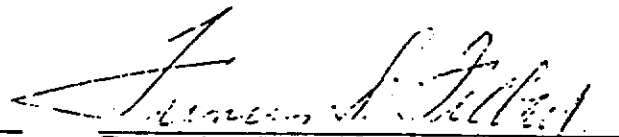
(b) Should no similar make-up overtime opportunity present itself within ninety (90) days subsequent to the discovery of the missed opportunity, the employee who was passed over shall be compensated at the overtime rate for a period equal to the opportunity missed.

2. When, for any reason, an employee on the "Overtime Desired" list, who has the necessary skills and who is available, is improperly passed over and another employee not on the list is selected for overtime work, the employee who was passed over shall be paid for an equal number of hours at the overtime rate for the opportunity missed.
3. When a question arises as to the proper administration of the "Overtime Desired" list at the local level, an APWU steward may have access to appropriate overtime records.
4. The foregoing principles are without prejudice to either party's position as to the proper interpretation of Article VIII, Section 5. They shall be applied to all timely filed and currently active grievances and to future grievances filed pursuant to the 1973 National Agreement unless they are superseded by a future agreement between the Postal Service and the APWU, or by an arbitrator's award that the parties agree is dispositive of the issue.

If this document and its provisions set forth our agreement, please keep one copy for your files, sign the duplicate original and return it to me to acknowledge the settlement.

Sincerely,

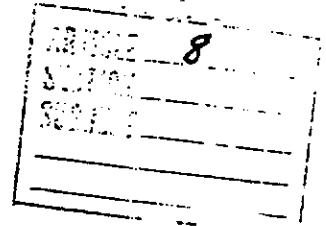

James C. Gildea
Assistant Postmaster General
Labor Relations Department


Francis S. Filbey
General President
American Postal Workers
Union, AFL-CIO



#8

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260
April 16, 1985



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

Mr. Vincent W. Sombrotto
President
National Association of
Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001-2197

Gentlemen:

As confirmation of your concurrence that the following represents agreed upon positions on certain of the overtime issues the parties have discussed, please sign and return a copy of this letter.

- A. The 12 hours per day and 60 hours in a service week are to be considered upper limits beyond which full-time employees are not to be worked.
- B. The parties agree that local offices may discuss multiple overtime desired lists during the current local implementation process with a view toward local resolution of the issue.
- C. The parties agree that employees on "sectional" overtime desired lists as identified through Article 30 may not be used in other "sections" to avoid the payment of penalty pay.
- D. For the purpose of the application of the overtime provisions, scheme study hours used by an employee pursuant to a voluntary bid are to be counted towards the daily and weekly work hour limitations. For example,

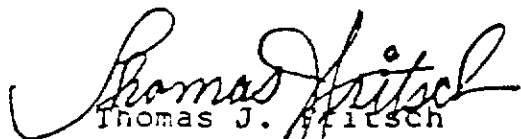
if an overtime desired list employee who would otherwise be available for 12 hours work on a particular day is brought in for 1 hour scheme study before tour, that employee would be considered to be available for 11 additional work hours that particular day. If the employee ultimately qualifies and is placed in the assignment, compensation for that hour would be as if the employee had worked that hour. If this "work hour" is in excess of the restrictions in Article 8, Section 5F, the compensation would be at the penalty rate.

If the employee fails to qualify, he or she is not entitled to any additional compensation or overtime opportunity for any overtime missed due to the employee being engaged in scheme study.

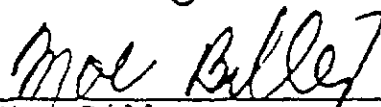
- E. Grievances which involve interpretation of the new provisions of Article 8 will be held at the step where they presently reside in the grievance procedure. Newly filed grievances will be processed through Step 2 and held there.

Positions agreed to by the parties should be followed in disposing of existing grievances. Those interpretive issues remaining in dispute will be expeditiously placed before an arbitrator. Grievances involving those issues will ultimately be disposed of consistent with the arbitration award.

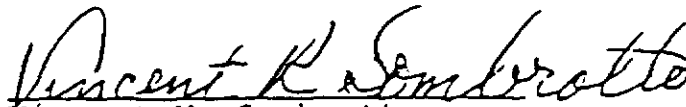
Sincerely,



Thomas J. Fritsch
Assistant Postmaster General
Labor Relations Department



Moé Biller
American Postal Workers
Union, AFL-CIO



Vincent W. Sombrotto
National Association of
Letter Carriers, AFL-CIO

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:

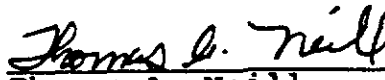
1. Full-time employees and part-time regular employees who file a timely grievance because they were improperly assigned to work their holiday or designated holiday will be compensated at an additional premium of 50 percent of the base hourly straight time rate.
2. For each full-time employee or part-time 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.



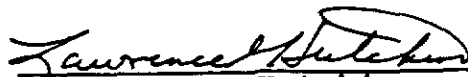
William J. Downes
Director, Office of
Contract Administration
Labor Relations Department

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



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

ARTICLE	8
SECTION	5
SUBJECT	204B
	Letter Carrier
	OVERTIME

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

Re: H1N-5H-C 26031
Lodi, CA

Dear Mr. Hutchins:

On January 12, 1989, we met to discuss the above-captioned grievance currently pending national level arbitration.


In full and complete settlement of this case, it is agreed:


1. An employee serving as a temporary supervisor (204B) is prohibited from performing bargaining unit work, except to the extent otherwise provided in Article 1, Section 6, of the National Agreement. Therefore, a temporary supervisor is ineligible to work overtime in the bargaining unit while detailed, even if the overtime occurs on a nonscheduled day.
2. Form 1723, which shows the times and dates of a 204B detail, is the controlling document for determining whether an employee is in 204B status.
3. Management may prematurely terminate a 204B detail by furnishing an amended Form 1723 to the appropriate union representative. In such cases, the amended Form 1723 should be provided in advance, if the union representative is available. If the union representative is not available, the Form shall be provided to the union representative as soon as practicable after he or she becomes available.
4. The grievant in this case, William Morehouse, will be paid eight (8) hours at the overtime rate.

Lawrence G. Hutchins

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle case no. HLN-5B-C 26031 and remove it from the pending national arbitration listing.

Sincerely,


Stephen W. Furgeson
General Manager
Grievance and Arbitration
Division


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

DATE 1/12/89

Enclosure



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

RECEIVED

AUG 1 1988

APWU
CLERK DIVISION

ARTICLE	7
SECTION	3
SUBJECT	LEAVE COUNTS
	PTF CONVERSION

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

AUG 30 1988

Re: Class Action
Little Rock, AR 72231
H4C-3B-C 52171

Dear Mr. Guffey:

On August 12, 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 a PTF at the Little Rock Post Office should have been converted to full-time status.

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.


Mr. Cliff J. Guffey

2

Time limits were extended by mutual consent.

Sincerely,


Samuel M. Pulcrano
Grievance & Arbitration
Division


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



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

ARTICLE	8
SECTION	8
SUBJECT	
GUARANTEE	
WAIVER	

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

November 14, 1988

Re: Class Action
Salisbury, MD 21801
H4N-2D-C 40885

Class Action
Radford, VA 24141
H4N-2M-C 33087

Dear Mr. Hutchins:

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

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in these cases. The issue in these grievances is whether management may solicit employees to work less than the contractual guaranteed provided for in Article 8, Section 8. Management may not solicit employees to work less than their call in guarantee, nor may employees be scheduled to work if they are not available to work the entire guarantee. However, an employee may waive a guarantee in case of illness or personal emergency. This procedure is addressed in the F22, Section 222.14 and the ELM, Section 432.63.

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


Mr. Lawrence G. Hutchins


2

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

Time limits were extended by mutual consent.

Sincerely,


Dominic J. Scola, Jr.
Grievance & Arbitration
Division


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



ARTICLE 8
SECTION 5
REMOVAL NAME FROM ODL

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

SEP 13 1988

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

Re: H4N-5K-C 4489
Class
Las Vegas, NV 89114

Dear Mr. Hutchins:

On September 12, 1988, we held a pre-arbitration discussion of the above-captioned case.

During our discussion we mutually agreed that management may not unilaterally remove an employee's name from the Overtime Desired List if the employee refuses to work overtime when requested. However, employees on the overtime desired list are required to work overtime except as provided for in Article 8, Section 5.E.

This represents a full and complete settlement of all issues in the above referenced case. Accordingly, this case will be removed from the pending national arbitration list.

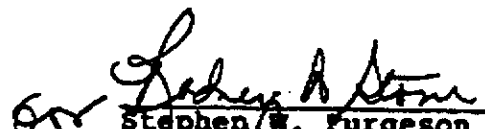
Please sign and return the enclosed copy of this letter acknowledging your agreement with this settlement and

Mr. Lawrence G. Hutchins

2


withdrawing E4N-5K-C 4489 from the pending national arbitration list.

Sincerely,


Stephen W. Furgeson
General Manager
Grievance and Arbitration
Division

DATE 9/13/88

Enclosure


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

DATE 9/13/88



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

~~CONFIDENTIAL~~

FEB 8 1988

CONFIDENTIAL

10
S.L. HANCOCK
ROLL

Mr. Owen Barnett
Assistant Director
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

FEB 5 1988

Re: G. Venegas
South Suburban, IL 60499
B4C-4L-C 34378

Dear Mr. Barnett:

On October 6, 1987, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether employees on the overtime desired list can remove their names from the list during the quarter.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. The parties at step 4 agree that when an employee requests that his/her name be removed from the overtime desired list, the request will be granted. However, management does not have to immediately honor the request if the employee is needed for overtime work on the day the request is made or scheduled for overtime in the immediate future. Further, once an employee is removed from the overtime desired list, he/she will only be permitted to place their name back on the list in accordance with Article 8, Section 5.A., of the National Agreement.

Accordingly, we agreed to remand this case to the parties at Step 3 for application of the above agreement.

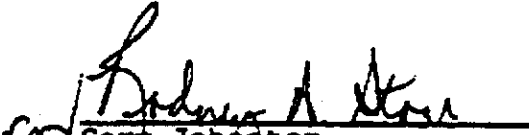
Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

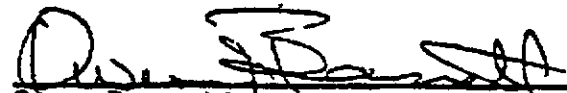
Mr. Owen Barnett

2

Time limits were extended by mutual consent.

Sincerely,


Gary Johnston
Grievance & Arbitration
Division


Owen Barnett
Assistant Director
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO



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

RECEIVED

SEP 2 1986

Richard I. Wevodau
MAINTENANCE DIVISION, DIRECTOR
AMERICAN POSTAL WORKERS UNION

AUG 29 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

ARTICLE	<u>8</u>
SECTION	<u>5</u>
SUBJECT	<u>PTFS WORKED</u>

Re: T. Francini
New Britain, CT 06050
H4C-1J-C 14776

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 management violated the National Agreement by assigning part-time flexibles instead of full time regulars to work overtime.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We agreed that as stated in the Mittenthal arbitration award on Grievance Nos. M-8-W 27 and M-8-W 32, "... Nothing in Article 8, Section 5 states, expressly or by implication, that overtime must be offered to full-time regulars before it can be offered to part-time flexibles."

Accordingly, we agreed to remand this case to the parties at Step 3 for application of the above to the facts involved.

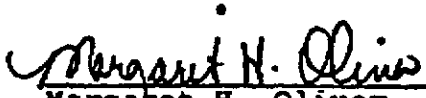
Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

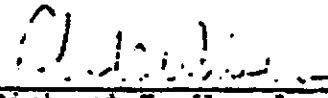
Mr. Richard I. Wevoda

2

Time limits were extended by mutual consent.

Sincerely,

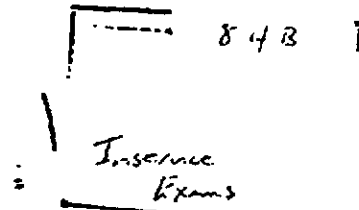

Margaret H. Oliver
Labor Relations Department


Richard I. Wevoda
Director
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza SW.
Washington, DC 20006

September 14, 1983

Mr. Kenneth D. Wilson
Assistant Director
Clerk Division
American Postal Workers Union,
AFL-CIO
817 14th Street, N.E.
Washington, D.C. 20005-3395



Re: G. Usher
Naples, FL 33940
E1C-3W-C 15084

Dear Mr. Wilson:

On July 15, 1983, 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 grievant is entitled to paid time for an inservice examination for possible voluntary reassignment to a position in the same wage level.

After further review of the matter, we agreed that there was no national interpretive issue fairly presented as to the meaning and intent of Articles 8 and 19 of the National Agreement.


The parties at this level agree that such inservice examinations are conducted on a "no loss - no gain" basis.


Accordingly, we agreed to remand this case to Step 3 for further consideration by the parties.

Please sign and return the enclosed copy of this decision as acknowledgment of agreement to remand this grievance.

Time limits were extended by mutual consent.

Sincerely,


A. J. Bonnonson
Labor Relations Department


Kenneth D. Wilson
Assistant Director
Clerk Division
American Postal Workers Union,
AFL-CIO



ARTICLE 8
SECTION 5
MISSED OPPORTUNITY

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

Mr. Francis J. Conners APR 10 1985
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 the following cases:

H1N-3F-C 25958, Chattanooga, Tennessee
H1N-3F-C 29805, Chattanooga, Tennessee
H1N-3F-C 27838, Chattanooga, Tennessee

The question in these grievances is whether management violated Article 8 by recording as an overtime opportunity the supervisor's unsuccessful attempts of calling the grievant in to work on his/her nonscheduled day.

It was mutually agreed to full settlement of these cases as follows:

1. An employee who cannot be contacted to work on his/her nonscheduled day will not have that call recorded as a missed opportunity.
2. The day in question also will not be counted as a day where the employee was available for overtime.

Please sign and return the enclosed copy of this letter acknowledging your agreement to settle these cases, withdrawing them from the pending national arbitration listing.

Sincerely,

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

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

4/16/85
(Date)

Enclosure



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

DEC 9 1983

RECEIVED

DEC 12 1983

ARTICLE	8	OFFICE OF
	8 B	DIRECTOR
		RESEARCH & EDUCATION
GUARANTEE-		
M.E.C. TFEAT		

Mr. James I. Adams
Assistant Director
Maintenance Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N. W.
Washington, D.C. 20005-3399

Re: B. Bellinger
Plainfield, NJ 07061
HLC-1N-C 12552

Dear Mr. Adams:

On September 9, 1983, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this case is whether the grievant is entitled to a four-hour guarantee for time spent undergoing medical examination/treatment due to on-the-job injury.

The facts indicate the grievant's regular tour of duty is 12:00 p.m. to 0830 a.m., Tuesday through Saturday. On two occasions, Thursday, October 13, 1982, and Tuesday, October 18, 1982, her nonscheduled day, she was scheduled for medical examination/treatment outside of her regular tour.

The union contends that the grievant is entitled to a guarantee under the provisions of Article 8, Section 8, of the 1981 National Agreement.

It is the Postal Service's position that the grievant is not entitled to guarantee hours under the circumstances presented in this case. Article 8 provisions are only applicable to work situations. The grievant was not called in to perform work nor did she perform any work. This position has been stipulated in a similar case, HLC-4C-C-17149, which was not appealed to arbitration.

In this particular case, and without prejudice, the grievant will be paid at the overtime rate for actual time, including travel, spent undergoing these examination/treatments.

Mr. James I. Arias

2

Based upon the above considerations, this grievance is denied.

Sincerely,


A. C. Johnson
Labor Relations Department



RECEIVED MAY 26 1983

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

May 25, 1983

Mr. Thomas Freeman, Jr.
Assistant Director
Maintenance Division
American Postal Workers
Union, AFL-CIO
817 - 14th Street, N.W.
Washington, D.C. 20005-3399

8
5
THIRTY NINE
SEVENTY ONE
O.T. EXCUSE

Re: F. Young
Knoxville, TN 37901
HLC-3F-C 14679

Dear Mr. Freeman:

On several occasions, the latest being April 19, 1983, we discussed the above-captioned grievance at the fourth step of our contractual grievance procedure.

The question in this grievance is whether management violated Articles 8 and 10 of the National Agreement, by requiring the grievant to submit a PS 3971 to be excused from overtime.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

The union contends that a PS 3971 (Request for, or Notification, of Absence) is used only for absences from the regularly scheduled workday and is a voluntary form.

It is the position of the U. S. Postal Service that the use of a PS 3971 is not restricted to regular work hours. A PS 3971 may be used at any time an employee requests to be excused from duty. This includes overtime as provided for under Article 8, Section 5. The use of a PS 3971 for documenting absences from overtime assists in complying with the intent of Article 8, Section 5.E. The completion of the PS 3971 is voluntary; however, if this form is not completed, then the request to be excused from overtime may be denied.

Mr. Thomas Freeman, Jr.

2

Accordingly, management is not in violation of the National Agreement; therefore, the grievance is denied.

Time limits were extended by mutual consent.

Sincerely,


A. Johnson
Labor Relations Department



Mr. Henry
Mr. McDougald
Ms. Barber
Mr. Dyer ✓
Ms. Bendzen
Postmaster - Jacksonville, F
Gen. Mgr. - Labor Relations
All Regions

FILE: SUBJECT
READING

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

January 13, 1982

Mr. Kenneth Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union,
AFL-CIO
817 - 14th Street, N. W.
Washington, D. C. 20005


Dear Mr. Wilson:

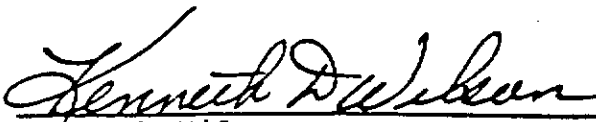
On January 8, 1982, you met with Frank Dyer in pre-arbitration discussion of H8C-3W-C-22961, Jacksonville, FL. The discussion of this grievance involved the proper Overtime Desired list for pool and relief clerks. It was mutually agreed to full settlement of the grievance as follows:

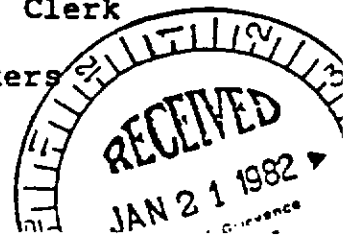
1. Pool and relief clerks will only be permitted to place their name on the Overtime Desired list of the pay location where domiciled.
2. When pool and relief clerks are assigned to units (station or branches) other than where their name is on the Overtime Desired list, they may be offered overtime, if available, after the overtime desired list is exhausted in that unit. They may not place their name on that Overtime Desired list.

Please sign the attached copy of this letter acknowledging your agreement with this settlement withdrawing H8C-3W-C-22961 from the pending national arbitration listing.

Sincerely,


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


Kenneth Wilson
Administrative Aide, Clerk
Craft
American Postal Workers
Union, AFL-CIO





UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza SW
Washington, DC 20000

Mr. Kenneth D. Wilson
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

SEP 24 1984

Re: B. Aldridge
Jacksonville, FL 32203
H1C-3W-C 34763

Dear Mr. Wilson:

On September 6, 1984, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

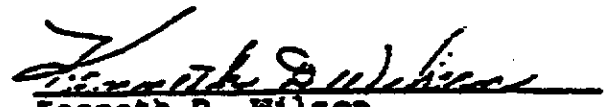
This grievance involves whether Level 3 Mail Processors are being improperly utilized at the Jacksonville facility.

During our discussion, we agreed to settle this case based on our understanding that during temporary periods when work on the automation equipment is not available, Level 3 Mail Processors may be utilized consistent with the provisions of Article 7. In addition, Article 25 permits the assignment of these employees to perform higher level duties for which they are qualified.

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

Sincerely,


Margaret H. Oliver
Labor Relations Department


Kenneth D. Wilson
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO



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

RECEIVED

DEC 9 1988

Rec'd by Mr. [unclear]
Mr. [unclear]
Mr. [unclear]

ARTICLE	8
SECTION	2 C
SUBJECT	8-10 DOES NOT APPLY TO PTR

Mr. Richard I. Nevodau
Director
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

DEC 6 1988

Re: Class Action
San Angelo, TX 76901
HAT-30-C 43451

Dear Mr. Nevodau:

On November 29, 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 PTR's are covered by the 8 within 8, 9, 10 provisions of the National Agreement.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. This is a local dispute suitable for regional determination by application of Article 8.2 to the particular fact circumstances.

There is no dispute between the parties at this level that Article 8.2.C. does not apply to part-time employees.

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.

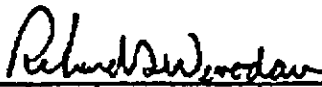
Mr. Richard I. Wevoda

2

Time limits were extended by mutual consent.

Sincerely,


David A. Stanton
Grievance & Arbitration
Division


Richard I. Wevoda
Director
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO



UNITED STATES POSTAL SERVICE

475 L'Enfant Plaza, SW
Washington, DC 20000

Mr. Richard I. Nevodau
Director
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

MAR 11 1987

ARTICLE	8
SECTION	3
SUBJECT	P.F.
	<i>Let's do this</i>

Re: Class Action
Watertown, CT 06795
H4C-1J-C 17391

Dear Mr. Nevodau:

On January 12, 1987, we met to discuss the above-captioned case at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether part-time flexible clerks must be scheduled to work 8 hours within 10 when scheduled to work 8 hours in a service day, and whether they are due overtime for time worked outside this 10-hour range.

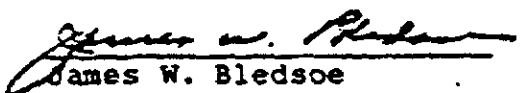
During our discussion, we mutually agreed to settle this grievance based on the following:

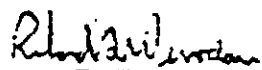
1. There is no contractual basis for the remedy requested in this grievance.
2. However, as provided in Section 432.32c. of the Employee and Labor Relations Manual, part-time flexible employees may not be required to work more than 12 hours in one service day (including meal time) except in emergency situations as determined by the PMG (or designee).

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

Time limits were extended by mutual consent.

Sincerely,


James W. Bledsoe
Labor Relations Department


Richard I. Nevodau
Director
Maintenance Craft Division
American Postal Workers Union,
AFL-CIO

RECEIVED

JUL 12 1995



A.P.W.U.

July 7 , 1995

Mr. Mike Morris
National Business Agent
American Postal Workers'
Union, AFL-CIO

Southeast Area Grievance
Appeal No. H90C-1H-C 95056923
Dated: 06/08/95
Local No. CM95286C

Subject: Step 3 Grievance Decision: CLASS ACTION
MEMPHIS, TN
Provision Allegedly Violated: 08.5060

Dear Mr. Morris:

This is to confirm the disposition of the subject Step 3 grievance appeal which was recently discussed.

The grievance was RESOLVED by mutual agreement as follows:

Normally, PTFs will be given one day off per week.

The time limit for processing at Step 3 was extended by mutual consent.

A handwritten signature in cursive script, appearing to read "Roland McPhail".

Roland McPhail
Labor Relations Specialist

A handwritten signature in cursive script, appearing to read "Mike Morris".

Mike Morris
American Postal Workers'
Union

cc: District Office
Postmaster

Tennessee
Memphis, TN 38101-9511



UNITED STATES POSTAL SERVICE
Southern Regional Office
Memphis TN 38166-0200

July 8, 1987

Mr. Mike Morris
National Business Agent
American Postal Workers
Union, AFL-CIO

Southern Region Grievance
Appeal No. S4C-3D-C 54581
Dated: 05/29/87
Local No. 11-87

Subject: Step 3 Grievance Decision: J. Wideman
Provision Allegedly Violated: Carbon Hill AL
08-03-01


Dear Mr. Morris:


This is to confirm the disposition of the subject Step 3 grievance appeal which was recently discussed with you.

The grievance was settled by mutual agreement as follows:

Where qualifications among PTF's are the same, the hours of work will be equitable.

The time limit for processing at Step 3 was extended by mutual consent.


Charles Gonzales
Labor Relations


Mike Morris
American Postal Workers
Union, AFL-CIO

cc: Postmaster, Carbon Hill, AL 35549-9998
Sectional Center Manager, Birmingham, AL
0

The full-time regular manual clerks on Tour 3 work outgoing mail and begin their tour at 1500 and end it at 2350, after the outgoing dispatch. There are ten FTRs in the section and three, Adams, Baker and Clark, are on the OTDL, the other seven are not on the OTDL. Tuesday, 1/15/97 was Baker's off day and she did not work. On 1/15/97, the supervisor required all the clerks to work two hours overtime to clear mail which did not make the 2350 dispatch. All nine FTRs who were there that day, worked until 0150. Baker comes to you, the Steward and wants to file a grievance for overtime.

Is there a violation of the Agreement? If so, complete the Step Two Form and fill out a request for information identifying the necessary documentation.

AMERICAN POSTAL WORKERS UNION, AFL-CIO

STEP 1 GRIEVANCE OUTLINE WORKSHEET

DISCIPLINE (NATURE OF) OR CONTRACT (ISSUE)				CRAFT		DATE		LOCAL GRIEVANCE #		USPS GRIEVANCE #				
UNIT/SEC/BR/STA/OFC			DATE/TIME		USPS REP - SUPR				GRIEVANT AND/OR STEWARD					
STEP 1 DECISION BY (NAME AND TITLE)								DATE AND TIME		INITIALS		INITIALING ONLY VERIFIES DATE OF DECISION		
GRIEVANT PERSON OR UNION		(Last Name First)		ADDRESS			CITY		STATE		ZIP		PHONE	
SOCIAL SECURITY NO.		SERVICE SENIORITY/CRAFT		STATUS	LEVEL	STEP	DUTY HOURS		OFF DAYS					
									<input type="checkbox"/> SAT <input type="checkbox"/> SUN <input type="checkbox"/> MON <input type="checkbox"/> TUE <input type="checkbox"/> WED <input type="checkbox"/> THU <input type="checkbox"/> FRI					
JOB#/PAY LOCATION/ (UNIT/SEC/BR/STA/OFC)				WORK LOCATION CITY AND ZIP CODE						LIFETIME SECURITY		VETERAN		
										<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No		

Notes:

(a) Problem:

(b) Background:

(c) Documents:

(d) Corrective Action:

(e) Management's Response:

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Grievant/Union	Nature of Allegation
----------------	----------------------

Date of Request

To: _____ Title: _____

From: _____ Title: _____

Subject: **REQUEST FOR INFORMATION & DOCUMENTS RELATIVE TO
PROCESSING & GRIEVANCE**

We request that the following documents and/or witnesses be made available to us in order to properly identify whether or not a grievance does exist and, if so, their relevancy to the grievance:

NOTE: Article 17, Section 3 requires the Employer to provide for review all documents, files, and other records necessary in processing a grievance. Article 31, Section 2 requires that the Employer make available for inspection by the Unions all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement. Under 8a(5) of the National Labor Relations Act it is an Unfair Labor Practice for the Employer to fail to supply relevant information for the purpose of collective bargaining. Grievance processing is an extension of the collective bargaining process.

☐ **REQUEST APPROVED**

☐ **REQUEST DENIED (GIVE REASON)**

(date)

(signed)

Defending the Employee Against Unwarranted Discipline

The Postal Service is issuing more and more discipline against employees, much of it undeserved. While we are enjoying unprecedented success in overturning most discipline, many times at the arbitration table, the business agent or advocate for the Union is precluded from bringing up arguments, even arguments with merit, which were not raised in the early steps of the grievance procedure. What follows is a check list of sorts I have designed which, if used properly by the steward, should result in far fewer missed arguments in the early steps of the grievance process. I have incorporated and gone beyond the usual "seven tests for just cause" you often see in training documents. If stewards will avail themselves of this check list on each and every discipline case, I believe our win rate in arbitration will soar even higher.

Check for the proper notice period. Article 16, Sections 4 and 5 require a ten day notice period on the job or on the clock for suspensions of 14 days or less and a 30 day notice period for discharge. Many times the USPS delays giving the discipline to the employee until they are inside that notice period. It is important to note the notice period begins when the employee receives the discipline, not when the discipline was written.

Is the charge specific? Many times the charge against the employee is unclear. For example, employees are sometimes accused of using "loud and abusive" language or having "unsafe work habits" or of "extending your breaks". There are many other examples of nebulous charges issued by the USPS. How can the Union properly defend against a charge that is not specific in nature. This argument is very persuasive in arbitration yet is often missed by stewards.

Is the discipline timely? This is actually a *laches* argument and the reasoning behind it is that in order to prepare a proper defense against a charge, the Union must know quickly what the charge is before memories of potential witnesses begin to fade and the ability to properly defend the charge is lost forever. For example, if an employee is accused of extending a break three weeks ago, that person would be hard pressed to even remember the circumstances surrounding that break, let alone get witnesses who might remember the situation; however, if an employee is accused of extending a break the day before, they might remember the circumstances and mount a proper defense. The USPS' own EL-921 Handbook recognizes this requirement on page 19, where they state: "Disciplinary action should be taken as promptly as possible after the offense has been committed."

Is the discipline progressive? In the USPS, the order of progressive discipline is normally: discussion, letter or warning, 7-day suspension, 14-day suspension and then discharge. While there are certain infractions which do not require the use of progressive and corrective discipline, most of the time this process should be followed. Again the USPS recognizes this in their EL-921 Handbook on page 12 ("the action taken must be progressive and corrective."), page 14 ("Have we taken prior progressive discipline?") and page 21 ("we are to abide by the principle of progressive discipline.").

Check the past elements. Many times suspensions and discharges contain a listing of prior disciplinary actions. Very often, these past elements are either stale or out of date, or they have been modified or removed by the grievance procedure or EEO. According to a Step 4 settlement of case H4C-5R-C 43882, when discipline has been removed on appeal, it should never be mentioned. When it has been modified on appeal, only the modified portion should be cited. For example, the USPS should never list as a past element a 7-day suspension (which was modified to a letter of warning), only the letter of warning should be listed. This occurs with frequency and many times the steward does not catch the error. You can see how an improperly listed element of past record can take away the progressive nature of the discipline.

Check for due process arguments on higher level concurrence and step 1 authority of the supervisor. Article 16, Section 8 requires higher level concurrence in the case of suspension or discharge. If that has not taken place, it should be argued. In addition, Article 15 requires that an employee must go to their initial level supervisor to file a grievance at step 1. If the discipline was issued or ordered by a superior of the initial level supervisor, can that supervisor be realistically expected to overturn the discipline? Step 1 of the procedure is nothing but a sham in that instance and the employee has been denied due process.

Was there a reasonable rule and did the employee have forewarning or knowledge of the possible or probable disciplinary consequences of the conduct? This is self-explanatory. It is commonly accepted that employees know they must be regular in attendance, never bring alcohol or drugs to the workplace and many other areas of misconduct reasonable people are expected to know. We do have success; however, where the USPS has a rule, fails to enforce it for a period of time and then enforces it again without first putting the employees on notice the rule will once again be enforced.

Did the USPS, before administering the discipline, make an effort to discover whether the employee did in fact violate or disobey an order or rule? This argument is very often overlooked by stewards and is a very successful defense in arbitration. A good rule of thumb is that if the employee is surprised when they receive the notice of disciplinary action, an argument should be made in this area. The USPS investigation must be made by the person who initiates the action, not the inspection service, and the investigation must come before the decision is made to issue the discipline. Again the USPS recognizes this requirement in the EL-921 where on page 18 they state: "Before administering the discipline, management must make an investigation . . . This is the employee's *day in court* privilege. Employees have the right to know with reasonable detail what the charges are and to be given a reasonable opportunity to defend themselves *before* the discipline is initiated." In addition, the memorandum on the role of the inspection service on page 337 on the National Agreement states: "The parties further acknowledge the necessity of an independent review of the facts by management prior to the issuance of disciplinary action."

Was the investigation fair and objective? As noted by the American Arbitration Association, at the investigation the management official may be both "prosecutor" and "judge" but s/he may not also be a witness against the employee. In addition, neither the request for discipline nor the disciplinary action itself should be completed prior to the pre-disciplinary hearing. If that has already been done, does the investigation have a chance of being fair and objective?

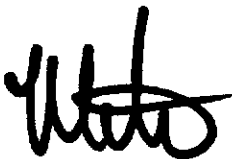
Is there substantial evidence the employee is guilty as charged? Many times the charge is not accurate, especially in attendance cases. Never rely on 3972s, they are often inaccurate. 3971s should always be requested to determine the accuracy of the charge.

Has the USPS applied its rules, orders and penalties even-handedly and without discrimination to all employees? As noted in the USPS own EL-921 on page 16: "If a rule is worthwhile, it is worth enforcing, but be sure it is applied fairly and without discrimination. Consistent and equitable enforcement is a critical factor, and claiming failure in this regard is one of the Union's most successful defenses." Disparate treatment cannot be tolerated by the Union and must be exposed wherever it exists. Never overlook this argument.

Was the degree of discipline reasonably related to the seriousness of the offense? Again this is self-explanatory. A 14-day suspension is tantamount to a fine of well over a thousand dollars. Is this a reasonable penalty for a few instances of unscheduled absence or extending a break? Where this argument makes sense, you should make it.

Is the discipline appropriate in light of the employee's record, length of service or personal circumstances. This is tied in a way to the listing of prior discipline. An employee's record can never be used to prove whether s/he is guilty of the most recent offense. The only proper use of the record of prior offenses is to help determine the severity of the discipline once the charge is proven. On the other hand, length of service, prior good record, personal problems and the like are often used as mitigating and extenuating circumstances which can serve to reduce or overturn the discipline where guilt is proven.

It is hoped this checklist will be a valuable tool for the steward and the member who is issued unwarranted discipline. Remember, do not overstate your case and claim arguments that do not really exist because that can actually lessen your chances of winning on your good points and likewise do not overlook an argument, it may be the difference between winning and losing. Good luck.

A handwritten signature in black ink, appearing to read 'Mike Morris', with a stylized, cursive script.

Mike Morris
National Business Agent

February 1, 1998

SUBJECT: Notice of Removal

MEMORANDUM FOR: Jane Doe
SS# 123-45-6789
P/L 351

You are hereby notified that you will be removed from the Postal Service effective March 2, 1998.

The reason for this removal is:

Charge # 1: Unsatisfactory work performance.

Specifically, between November 1 and December 23, 1997, I saw you improperly extended your rest break and lunch period six times. You have already been disciplined for unsatisfactory work performance in the past and you have not corrected your misbehavior. I am therefore left with no alternative to discharge.

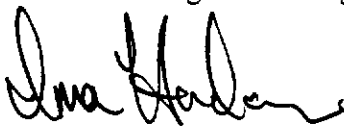
I have also considered the following elements of your past record in coming to this decision:

October 30, 1997 - 14-Day Suspension for unsatisfactory work performance. (Reduced to a 7-Day Suspension)

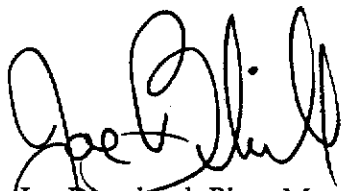
September 12, 1995 - 7-Day Suspension for unsatisfactory work performance.

July 12, 1994 - Letter of Warning for unsatisfactory work performance.

You have a right to file a grievance within 14 days of receipt of this notice.



Ima Hardcase
Tour III MDO

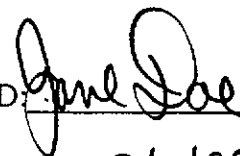


Joe Blowhard, Plant Manager
Concurring Official

RECEIVED: _____

DATE: _____

TIME: _____



2/1/98

2300

Grievant's Statement

I can't believe Ima Hardcase is firing me for extending my breaks and lunch. I always go to lunch and breaks with the rest of the P/L 351 crew and none of them are getting fired. I believe she is firing me because she overheard me telling Jesse that her boyfriend was ugly as hell. She just wants to show off her authority. I worked with her twenty years ago as a PTF and I know how she got her promotion to MDO and she can't stand the fact that I know she didn't get on merit if you know what I mean. Just like when we were in there for the Pre-D on this on January 31, she showed me on the request for discipline where she said I extended by breaks and all 6 times but I don't believe it. I don't even think I did at all. She is just trying to get rid of me because I know all the dirt on her. She is the one who should be fired and I request that she be fired and a Congressional investigation be started by the FBI to uncover all this mess. I never even had it this bad in Viet Nam.

Jane Doe
2/11/98

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STEP 1 DECISION BY (NAME AND TITLE)							DATE AND TIME		INITIALS		INITIALING ONLY VERIFIES DATE OF DECISION	
GRIEVANT PERSON OR UNION		(Last Name First)		ADDRESS			CITY		STATE	ZIP	PHONE	
SOCIAL SECURITY NO.		SERVICE SENIORITY/CRAFT		STATUS	LEVEL	STEP	DUTY HOURS		OFF DAYS			
									<input type="checkbox"/> SAT <input type="checkbox"/> SUN <input type="checkbox"/> MON <input type="checkbox"/> TUE <input type="checkbox"/> WED <input type="checkbox"/> THU <input type="checkbox"/> FRI			
JOB#/PAY LOCATION/ (UNIT/SEC/BR/STA/OFC)				WORK LOCATION CITY AND ZIP CODE					LIFETIME SECURITY		VETERAN	
									<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No	

Notes:

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AMERICAN POSTAL WORKERS UNION, AFL-CIO

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(date)

(signed)