

NATIONAL DISPUTE RESOLUTION CONFERENCE 2008

ARTICLE 1

- 1) Transitional employees are part of the NALC bargaining unit.

True – See JCAM page 1-3 (last sentence bottom of page). “In addition, transitional employees are members of the bargaining unit ...”. See NA, page 15, Article 7.1.B, Transitional Work Force, “The transitional work force shall be comprised of noncareer, bargaining unit employees as follows:” etc.....

ARTICLE 5

- 2) Laws concerning wages, hours and working conditions do not apply to letter carriers.

False - See JCAM page 5-1 (1st sentence in explanation). Article 5 prohibits management taking any unilateral action inconsistent with the terms of the existing agreement or with its obligations under law.

- 3) Past practices should never be argued in the grievance procedure.

False - See JCAM pages 5-1 through 5-2. The JCAM (last sentence bottom of page 5-1) states, “ the local parties must insure that the facts surrounding a dispute in which past practice plays a part are surfaced and thoroughly developed so an informed decision can be made. Article 5 may also limit the employer’s ability to take a unilateral action were a valid past practice exists. While most labor disputes can be resolved by application of the written language of the Agreement, it has long been recognized that the resolution of some disputes require the examination of the past practice of the parties.”

ARTICLE 7

- 4) Part-time flexible letter carriers are guaranteed 40 hours of work at straight time rate before transitional employees may be scheduled.

False - See NA pg 15 (Article 7.Section 1.B.3). Over the course of a pay period, the Employer will make every effort to ensure that qualified and available part-time flexible employees are utilized at the straight-time rate prior to assigning such work to transitional employees working in the same work location and on the same tour, provided that the reporting guarantee for transitional employees is met.

- 5) Time worked by a part-time flexible carrier on an opted assignment counts toward determining whether a need to convert the assignment to a full-time position has been demonstrated pursuant to Article 7.3.C.

NATIONAL DISPUTE RESOLUTION CONFERENCE 2008

True -. JCAM page 7-12 (1st sentence top of page). National Arbitrator Mittenthal held, “that time spent by a PTF on an assignment opted for under the provisions of Article 41 (see Article 41.2.B) counts toward meeting these maximization criteria.”

ARTICLE 8

- 6) The contract is violated if a part-time flexible schedule letter carrier works 8 hours at the straight-time rate on Monday and a full-time letter carrier on the OTDL does not work that day.

False -See JCAM page 8-8 **Overtime Assignment Rules Apply to Full-time Employees**. The introduction to Article 8.5 clarifies that its provisions as a whole apply only to full-time regular or full-time flexible employees who are “needed” to work overtime. This provision does not require management to use a full-time employee desiring to work overtime in preference to a part-time flexible, transitional or casual working overtime.

- 7) Holiday leave does not count towards the 60 hour cap.

False - See JCAM 8-17 (begins middle of page in explanation). The 12/60 limitations are inclusive of all hours, including any type of leave taken, consistent with the 20 hour overtime limit. Accordingly, holiday leave pay is credited toward the 12/60 limitation. Additionally, if an employee works on a holiday for which holiday leave is paid, those hours worked in excess of the holiday leave hours paid would also count toward the 12/60 limit.

- 8) Overtime work must be assigned to individuals on the overtime desired list prior to assigning such overtime work to transitional employees.

False -. See JCAM page 8-8 **Overtime assignment Rules Apply to full-time employees**. The introduction to Section 5 clarifies that its provisions as a whole apply only to full-time regular or full-time flexible employees who are “needed” to work overtime. This provision does not require management to use a full-time employee desiring to work overtime in preference to a part-time flexible, transitional or casual working overtime.

- 9) An Overtime Desired List employee has the option of accepting or declining overtime on any day.

False - JCAM page 8-28 **the June 8, 1988 Joint Statement on Overtime**. Under the **Regular Overtime List** paragraph states, “A letter carrier who signs the regular Overtime Desired List is obligated to work overtime when requested.” NA 8.5.E. page 20

NATIONAL DISPUTE RESOLUTION CONFERENCE 2008

- 10) Any transitional employee who is scheduled to work and who reports for work shall be guaranteed two (2) hour work or pay.

False – Art. 8.8.D JCAM page 8-23 (second to last paragraph). Any transitional employee who is scheduled to work and who reports for work shall be guaranteed four (4) hours' work or pay. NA page 22

- 11) Overtime worked by a letter carrier on the employee's own route is not counted as an overtime opportunity for the purpose of administration of the Overtime Desired List.

True - See JCAM page 8-11 and 8-13 Overtime worked on a letter carrier's own route on a regularly scheduled day is not counted or considered in determining whether overtime has been equitably distributed among carriers on the list. Missed opportunities for overtime (i.e. one OTDL carrier worked instead of another) must be made up for with equitable distribution of overtime during the quarter unless the bypassed carrier was not available (i.e. the carrier was on leave or working overtime on his/her own route on a regularly scheduled day, etc.)and page 8-13 See (M-00135) National Pre-Arb. 1) Overtime worked by a letter carrier on the employee's own route on one of the employee's regularly scheduled days is not counted as an "overtime opportunity" for the purposes of administration of the overtime desired list. 2) Overtime that is concurrent with, that is occurs during the same time as overtime worked by a letter carrier on the employee's own route on one of the employee's regularly scheduled days is not counted as an "opportunity missed" for purposes of administration of the overtime desired list.

- 12) An employee called in on a non-scheduled day cannot waive his/her Article 8, Section 8 guarantee.

False - See JCAM page 8-24 **Waiving guarantees:** A Step 4 settlement, dated November 14, 1988 provides that "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 22.14 and the ELM, Section 432.63."

- 13) "Auxiliary assistance" may include the use of part-time flexible letter carriers at the regular overtime rate.

True See JCAM page 8-14 **Implementing Memorandum on "Letter Carrier Paragraph."** A memorandum of understanding signed December 20, 1988 further explained the requirement to seek to use auxiliary assistance before requiring a carrier not on the ODL or work assignment list to work overtime. Management must seek to use all of the following to provide auxiliary assistance:

NATIONAL DISPUTE RESOLUTION CONFERENCE 2008

- casuals
- part-time flexibles at the straight-time or regular overtime rate
- transitional employees at the straight-time or regular overtime rate
- available full-time regular employees such as unassigned or reserve regulars at the straight time rate
- full-time carriers from the overtime desired list at the regular overtime rate.

- 14) Part-time flexible letter carriers are paid at a higher overtime rate than full-time regular employees.

False - See JCAM page 8-3 **Postal Overtime Pay Rate**. The contractual overtime rate of pay is one and one-half times the base straight-time rate. The overtime rate for part-time flexible employees is the same as the overtime rate for fulltime regular employees in the same step and grade. NA page 18 Art. 8.4.A

ARTICLE 10

- 15) A Local Memorandum of Understanding may provide either specifically, or by percentage, for a certain number of employees to be off during the choice and non-choice periods, and may require that such leave be granted when the slots are not filled.

True - See JCAM pages 10-5 (2nd paragraph , 3rd sentence). Key LMOU provisions may establish the percentage of carriers (or a fixed number of carriers) to receive vacation each week, both during the choice vacation period and during the non-choice periods.

- 16) Part-time flexible letter carriers are credited at the beginning of the leave year for all annual leave to be earned that year.

False - See JCAM page 10-3 **Annual Leave Accrual—Part-Time Employees**. Part-time employees earn annual leave as set forth in ELM Exhibit 512.312, reproduced here. ELM section 512.312.b provides that PTFs are credited with annual leave earnings at the end of each biweekly pay period. (ELM 512). PTF employees earn annual leave based on the number of hours in pay status on an earn-as-you-go basis.

- 17) A supervisor may authorize sick leave for an absence of more than 3 days without medical documentation or other acceptable evidence from the employee.

False - See JCAM page 10-12 **Medical Certification**. ELM Section 513.361 and 362 a. For absences of more than three days, an employee must submit “medical documentation or other acceptable evidence” in support of an application for sick leave (“three days” means three scheduled workdays).

NATIONAL DISPUTE RESOLUTION CONFERENCE 2008

- 18) Only an employee's sons/daughters and spouse qualify for the 80 hours of sick leave for dependent care.

False - See JCAM page 10-13 (indented paragraph – 2nd sentence). Per the Sick Leave for Dependent Care Memo of Understanding, parents also qualify.

- 19) Absences for FMLA purposes can be cited in discipline actions.

False - See JCAM page 10-18 (2nd complete paragraph, 2nd sentence). The JCAM states, "Employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions. **Likewise, FMLA- covered absences may not be used towards any disciplinary actions.** Employees cannot waive, nor may employers induce employees to waive, their rights under FMLA."

ARTICLE 11

- 20) City letter carriers may use a total of up to three workdays of annual leave, sick leave or leave without pay, to make arrangements necessitated by the death of a family member or attend the funeral of a family member.

True - NA page 160 MOU on Bereavement Leave

- 21) Only full-time letter carriers need to be listed on the holiday schedule.

False - See JCAM pages 11-3 and 11-4. (11-3) Article 11.6.B provides the scheduling procedure for holiday assignments. Keep in mind that Article 30, Section B.13 provides that "the method of selecting employees to work on a holiday" is a subject for discussion during the period of local implementation. The Local Memorandum of Understanding (LMOU) may contain a local "pecking order." In the absence of LMOU provisions or a past practice concerning holiday assignments, the following minimum pecking order should be followed:

1) All casual and part-time flexible employees to the maximum extent possible, even if the payment of overtime is required.... (11-4) The posting of a holiday schedule on the Tuesday preceding the service week in which the holiday falls is to include part-time flexible employees who at that point in time are scheduled to work on the holiday in question. Step Four (M-01207) requires that part-time flexible carriers be included in the holiday schedule.

- 22) When scheduling for a holiday, management must post the holiday schedule the Wednesday preceding the service week in which the holiday falls.

NATIONAL DISPUTE RESOLUTION CONFERENCE 2008

False - JCAM 11-2 Article 11.6.A The Employer will determine the number and categories of employees needed for holiday work and a schedule shall be posted as of the Tuesday preceding the service week in which the holiday falls. JCAM 11-4 – second to last paragraph

- 23) A transitional employee may be hired for a term not to exceed 360 calendar days for each appointment.

True – NA page 16 Article 7, Section 1. B. 4 states: Transitional employees shall be hired pursuant to such procedures as the Employer may establish. They will be hired for a term not to exceed 360 calendar days for each appointment. Transitional employees will have a break in service of at least 5 days between appointments.

ARTICLE 12

- 24) The employer shall have the right to separate from its employ any probationary employee at any time during the probationary period and the employee shall not be permitted access to the grievance procedure in relation thereto.

True - See JCAM page 12-2 (3rd paragraph of explanation). The Postal Service has a right to separate probationary employees at any time during their probationary period without establishing “just cause.” Employees separated during the probationary period are contractually barred from filing a grievance concerning the separation. NA page 32

- 25) Management considers the same criteria in deciding whether to grant transfer requests and in deciding whether to grant requests for mutual exchanges.

True - See JCAM page 12-43 (last sentence on page). In evaluating and responding to mutual exchange requests, installations heads should follow the criteria provided for in the Transfer Memorandum.

ARTICLE 13

- 26) Employees on light duty are guaranteed five eight hours workdays per week.

False - See JCAM page 13-5 (middle of page). National Arbitrator Mittenthal held that full-time employees on light duty are not guaranteed eight hours a day or forty hours a week of light duty work. They may be sent home before the end of their tour due to lack of work. ALSO JCAM page 13-4 (or NA page 53)

NATIONAL DISPUTE RESOLUTION CONFERENCE 2008

- 27) Employees on light duty have the right to work their regular duty assignments.

False -See JCAM page 13-5 (2nd paragraph). Article 13, Section 3 provides that changes may be made in an employee's regular schedule and work location in order to accommodate a light duty request .

ARTICLE 14

- 28) If an employee believes he/she is being required to work under unsafe conditions, such employee may file a grievance at Formal Step A of the grievance procedure within fourteen (14) days of notifying such employee's supervisor.

True - See JCAM page 14-1 c) If an employee believes he/she is being required to work under unsafe conditions, such employee may file a grievance at Formal Step A of the grievance procedure within fourteen (14) days of notifying such employee's supervisor.

- 29) A grievance which has as its subject a safety or health issue directly affecting an employee(s) which is subsequently properly appealed to arbitration may be placed at the head of the appropriate arbitration docket at the request of the union.

True - See JCAM page 14-2 (3rd paragraph). A grievance which has as its subject a safety or health issue directly affecting an employee(s) which is subsequently properly appealed to arbitration may be placed at the head of the appropriate arbitration docket at the request of the union. The Postal Service will not refuse to schedule a case in accordance with Article 14.2 based solely upon the belief that no safety issue is present. JCAM page 14-1 (blue box – last paragraph), NA page 58

ARTICLE 15

- 30) If a letter carrier files his or her own grievance, management must give the steward or other union representative the opportunity to be present during any portion of the discussion which involves adjustment or settlement of the grievance.

True - See JCAM 15-2 (3rd paragraph). If a letter carrier files his or her own grievance, management must give the steward or other union representative the opportunity to be present during any portion of the discussion which involves adjustment or settlement of the grievance.

- 31) The union may submit written additions and corrections to the Formal Step A record by submitting the additional information within 7 days **after** the joint Formal A case file was appealed to Step B. NA page 68 (g)

NATIONAL DISPUTE RESOLUTION CONFERENCE 2008

False - See JCAM 15-7(1st sentence after 1st blue box). **Additions and Corrections** The union may submit written additions and corrections to the Formal Step A record with the Step B appeal within the time limit for filing an appeal to Step B.

ARTICLE 16

- 32) Discussions with employees are not discipline and are not grievable.

True - See JCAM page 16-4 Although included in Article 16, a “discussion” is non-disciplinary and thus is not grievable. Discussions are conducted in private between a supervisor and an employee. Both the supervisor and the employee may keep a record of the discussion for personal use, however the notations are not to be considered official Postal Service records. They may not be included in the employee’s personnel folder, nor may they be passed to another supervisor.

ARTICLE 17

- 33) Management may delay granting a steward time on the clock to investigate a possible grievance in some circumstances.

True - JCAM pages 17-5 (3rd sentence from bottom). If management delays a steward from investigating a grievance, it should inform the steward of the reasons for the delay and when time should be available. Likewise, the steward has an obligation to request additional time and to give the reasons why it is needed.

- 34) The union is entitled to information such as attendance records, payroll records, documents in an employee’s official personnel file, internal USPS instructions and memorandums, disciplinary records and Postal Inspection Service investigative memoranda (IM’s) when necessary and relevant to a possible grievance.

True - See JCAM page 31-2 (last sentence, 1st paragraph) Examples of the types of information covered by this provision include: attendance records, payroll records, documents in an employee’s official personnel file, internal USPS instructions and memorandums, disciplinary records and Postal Inspection Service investigative memoranda (IM’s).

ARTICLE 19

- 35) When changes to handbooks, manual or published regulations directly relate to wages, hours or working conditions, management must notify the union.

NATIONAL DISPUTE RESOLUTION CONFERENCE 2008

True - See JCAM 19-1 (2nd paragraph, 1st sentence in blue box) Notice of such proposed changes that directly relate to wages, hours or working conditions will be furnished to the Union at the national level at least sixty (60) day prior to issuance.

- 36) Special route inspections are conducted in accordance with applicable provisions of Handbook M-39.

True - See JCAM page 41-26 **Special Route Inspections** Special Route Inspections are governed by the provisions of M - 39, Section 270 reprinted below: etc..... NA page 197

- 37) The local parties may agree to the development of local policies and local forms even if the policies and forms contradict handbooks and manuals, as long as the local parties agree to the policies and forms.

False - See JCAM page 19-2 **Local Policies** Locally developed policies may not vary from nationally established handbook and manual provisions. Additionally, locally developed forms must be approved consistent with the Administrative Support Manual and may not conflict with nationally developed forms found in handbooks and manuals.

- 38) The local union may initiate a grievance alleging that a provision of a handbook, manual or published regulation of the Postal Service is not fair, reasonable, or equitable, or that such provision is inconsistent with the National Agreement.

False – See JCAM page 19-1 (2nd paragraph blue box, 3rd sentence). “If the Union, after the meeting, believes the proposed changes violate the National Agreement (including this Article), it may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change.

ARTICLE 13

- 39) An employee who accepts a limited duty assignment waives the right to contest the propriety of the assignment.

False - See JCAM page 13-11 and 13-12 An employee could be offered a limited duty assignment that meet OWCP's requirements, but fails to meet the requirements of ELM 546.142. Carriers refusing such disputed assignments could risk termination of compensation benefits. These situations are addressed in the Memorandum of Understanding M-01120, dated January 29, 1993 which allows a partially recovered employee to accept a limited duty job offer “under protest” and still pursue a grievance concerning the assignment. The memorandum provides that:

1. By accepting a limited duty assignment, an employee does not waive the

NATIONAL DISPUTE RESOLUTION CONFERENCE 2008

opportunity to contest the propriety of that assignment through the grievance procedure, whether the assignment is within or out of his/her craft.

2. An employee whose craft designation is changed as a result of accepting a limited duty assignment and who protests the propriety of the assignment through the grievance procedure shall be represented during the processing of the grievance, including in arbitration, if necessary, by the union that represents his/her original craft.

ARTICLE 23

- 40) A union official is not required to give notification to management prior to visiting a postal installation.

False - See JCAM page 23-1 (first bullet). The union needs to give management reasonable notice prior to entering a postal facility - a phone call to an appropriate management official is sufficient. NA page 93

ARTICLE 25

- 41) An individual who has successfully exercised an opt under Article 41, Section 2.B.3 or 4 is not available to be detailed to higher level bargaining unit work under Article 25.

False - See JCAM page 41-12, (4th paragraph, 1st sentence). An Employee on a hold-down assignment may voluntarily terminate the assignment to accept a higher level assignment under the provisions of Article 25.

ARTICLE 28

- 42) When an employee is issued a letter of demand the employee must immediately make restitution and then may grieve the amount of the demand.

False - See JCAM page 28-2 (either actual contract language in 3rd blue box or under 3rd blue box) **Due Process Delay in Collection.** Article 28, Section 4.A. prohibits the Postal Service from collecting a debt, regardless of the amount or type of debt, until all grievances concerning the debt have been resolved.

ARTICLE 29

- 43) An employee's driving privilege is automatically revoked or suspended with a revocation or suspension of his/her state driver's license.

True - See JCAM page 29-2 (sentence before 1st bullet). Management may suspend or

NATIONAL DISPUTE RESOLUTION CONFERENCE 2008

revoke a carrier's driving privileges under certain specified circumstances:
Automatically, concurrently with the suspension or revocation of the employee's state driver's license. Automatic reinstatement of postal driving privileges must follow reinstatement of the state driver's license.

ARTICLE 30

- 44) During local negotiations, the parties can only discuss the 22 items found in Article 30 and may not address other issues.

False - See JCAM page 30-2 (1st sentence before 1st blue box). The local parties are free to discuss other subject areas as well, but neither party is required to discuss subjects other than the 22 items listed in Article 30, Section B.

ARTICLE 31

- 45) Management is not required to release an employee's medical records to the union unless the employee has consented.

False. See JCAM page 31-2 and 31-3, and (ASM Appendix 120.90) and EL-806 (last sentence on page). The union is also entitled to medical records necessary to investigate or process a grievance, even without an employee's authorization, as provided for in the Administrative Support Manual Appendix and by Articles 17 and 31 of the National Agreement.

ARTICLE 41

- 46) Management is not required to notify the local union when a city letter carrier is detailed temporarily to a supervisory (204-b) assignment.

False -See JCAM page 41-3 (1st blue box). Form 1723, Notice of Assignment, shall be used in detailing letter carriers to temporary supervisor positions (204b). The Employer will provide the Union at the local level with a copy of Form(s) 1723 showing the beginning and ending of all such details.

- 47) A full-time letter carrier serving in a 204-b assignment retains his/her duty assignment unless the 204-b assignment lasts longer than 6 months.

False -. See JCAM page 41-2 (last paragraph in 2nd blue box). The duty assignment of a full-time carrier detailed to a supervisory position, including a supervisory training program in excess of four months shall be declared vacant and shall be posted for bid in accordance with this Article. Upon return to the craft the carrier will become an

NATIONAL DISPUTE RESOLUTION CONFERENCE 2008

unassigned regular. A letter carrier temporarily detailed to a supervisory position will not be returned to the craft solely to circumvent the provisions of Section I.A.2. - If their route is declared vacant and posted for bid in accordance with the letter carrier craft article that individual may bid for the assignment if they are working as a letter carrier.

- 48) A letter carrier working a 204-b assignment may not bid on vacant letter carrier craft duty assignments.

True - See JCAM page 41-2 /41-3 (1st sentence under 1st blue box). While city letter carriers temporarily detailed to a supervisory position (204b) may not bid on vacant city letter carrier craft duty assignments while so detailed, they may bid on the multi-craft positions of VOMA or Examination Specialist while on detail.

- 49) Full-time flexible positions are not available for opting.

True - See JCAM 41-11 (1st full sentence top of page). Full-time flexible positions are not subject to opting because they are not bid assignments.

- 50) A full-time reserve or unassigned regular letter carrier who has opted for an assignment under Article 41, Section 2.B.3 must work the duty assignment for its duration and may not bid on other full-time duty assignments.

False – See JCAM 41-12, (2nd paragraph). An opting employee may bid for and obtain a new, permanent full-time assignment during a hold-down. A national pre-arbitration settlement established that such an employee must be reassigned to the new assignment.