

ARTICLE 41
ISSUE: Denial of Opt/Hold-Down Assignment

1. Definition: A full-time reserve, unassigned full-time regular, or a part-time flexible letter carrier may exercise their preference for available full-time craft duty assignments of anticipated duration of five days or more within their assigned units. The process for notifying management of an employee's desire to opt is decided locally, but once the employee has made management aware, seniority shall be the determining factor.
2. Contractual and Handbook cites:
 - A. National Agreement, Article 41, Section 2.B. 3., 4 & 5.
 - B. JCAM pgs. 41-9 thru 41-15).
3. Documents which the parties should jointly develop and review to establish all relevant facts:
 - A. Posting of available hold-down assignments (if there are no provisions for posting hold-down assignments, carriers must learn of available assignments by word of mouth or by reviewing scheduling documents, and must then make their supervisors aware of their desire to opt for the vacant assignment(s)).
 - B. Relevant portions of the Local Memorandum of Understanding.
 - C. Past practice regarding the procedures for announcing vacancies and/or for opting on hold-down assignments
 - D. Annual leave sign-up chart.
 - E. Copy of notification requesting opt by carrier.
 - F. Weekly schedule showing the anticipated opting period of 5 days or more.
 - G. Statement from carrier substantiating their request for the opt.
 - H. Seniority list of the affected unit.
 - I. 3971 of the carrier whose assignment is available for 5 days or more.
4. Factors which must be considered when evaluating the case:
 - A. Did a vacancy of 5 days or more exist?
 - B. Did management fail to make the vacancy available for opt?
 - C. Did a junior carrier receive the opt instead of the senior carrier who had requested it?
 - D. Did the denial of the opt cause a carrier to receive fewer hours of pay than they would have otherwise received had the opt been granted?
 - E. As a result of the improperly denied opt, did a regular carrier work a schedule other than that of the opt?
5. Possible Remedies/Citations:
 - A. C-05287, Regional Arbitrator Rotenberg, November 1, 1985: Where management improperly refused to honor opting requests of two PTF carriers, management is ordered to make the carriers whole for any losses suffered as a result. (MRS pg. 223)
 - B. M-00237, Pre-arb, July 1, 1982: A temporary vacancy of five (5) days or more that includes a holiday may be opted for, per Article 41, Section 2.B. (MRS pg. 220)
 - C. C-06461, National Arbitrator Bernstein, September 12, 1986, Sections 3 and 4 of Article 41.2B: allow reserve and part-time flexible letter carriers to use their seniority to obtain five day assignments. There are no exceptions or qualifications in the language that would indicate that the sections apply only to potential bidders who can work the assignments without departing from straight time pay status. (MRS pg. 219)
 - D. Cease and desist, and pay an additional 50% for all hours worked off the opted-for assignment.

letter carrier craft there are currently no exceptions for any reason, either voluntary or involuntary.

National Arbitrator Richard Mittenthal ruled in H8N-4B-C 16721, March 8, 1982. (C-03225) that management did not violate Article 41.2.A.1 when it refused to allow letter carriers to use their seniority to choose from among assignments which were available on a certain day. Mittenthal ruled (H1N-5D-C 2120, July 22, 1983, C-03807) that a past practice of assigning available work to the senior PTF carrier was not binding.

- 41.2.A.2**
2. Seniority is computed from date of appointment in the Letter Carrier Craft and continues to accrue so long as service is uninterrupted in the Letter Carrier Craft in the same installation, except as otherwise specifically provided.

Article 41.2.2 establishes the general rule that a letter carrier's seniority is computed continuously from the date of appointment in the Letter Carrier craft if the carrier serves without interruption in the Carrier craft and works in the same installation.

Note that Article 41.2.D, below, provides for exceptions to Article 41.2.A.2.'s requirements that for a carrier's seniority to be computed continuously from the date of appointment in the Letter Carrier craft, the carrier must serve without interruption in the carrier craft and work in the same installation.

- 41.2.A.3**
3. No employee solely by reason of this Article shall be displaced from an assignment the employee gained in accordance with former rules.

The purpose of Article 41.2.A.3 is to avoid displacing employees from bid assignments gained under earlier National Agreements if there are any changes in the National Agreement's seniority rules.

41.2.B B. Definitions

1. Seniority for bidding on preferred Letter Carrier Craft duty assignments and for other purposes for application of the terms of the National Agreement shall be restricted to all full-time and full-time flexible regular city letter carriers.
- 41.2.B.2**
2. Part-time regular letter carriers are considered to be a separate category and seniority for assignment and other purposes shall be restricted to this category.

Part-time regulars may use their seniority only in that category. Upon reassignment to part-time flexible or full-time status, part-time regulars begin a new period of seniority.

- 41.2.B.3**
3. Full-time reserve letter carriers, and any unassigned full-time letter carriers whose duty assignment has been eliminated in the par-

tical delivery unit, may exercise their preference by use of their seniority for available craft duty assignments of anticipated duration of five (5) days or more in the delivery unit within their bid assignment areas, except where the local past practice provides for a shorter period.

4. Part-time flexible letter carriers may exercise their preference by use of their seniority for vacation scheduling and for available full-time craft duty assignments of anticipated duration of five (5) days or more in the delivery unit to which they are assigned.
5. A letter carrier who, pursuant to subsections 3 and 4 above, has selected a craft duty assignment by exercise of seniority shall work that duty assignment for its duration.

Opting on Temporary Vacancies. Article 41.2.B.3, 41.2.B.4 and 41.2.B.5 provide a special procedure for exercising seniority in filling temporary vacancies in full-time duty assignments. This procedure, called “opting,” allows carriers to “hold down” vacant duty assignments of regular carriers who are on leave or otherwise unavailable to work for five or more days.

Full-time reserve, full-time flexibles and unassigned full-time letter carriers may opt on vacancies of fewer than five days where there is an established local past practice. (Article 41.2.B.3)

Eligibility for opting. Full-time reserve letter carriers, full-time flexible schedule letter carriers, unassigned full-time carriers, and part-time flexible carriers may all opt for hold-down assignments.

All unassigned regulars have opting rights, regardless of the reason for the unassigned status (Step 4, H94N-4H-C 96007241, September 25, 2000, M-01431).

Although Article 12.3 of the National Agreement provides that “an employee may be designated a successful bidder no more than seven (7) times” during the contract period, a national settlement (H1N-1E-C 25953, May 21, 1984, M-0513) establishes that these restrictions do not apply to the process of opting for vacant assignments. Moreover, opting is not “restricted to employees with the same schedule as the vacant position” (H1N-1J-C 6766, April 17, 1985, M-0843). Rather, an employee who opts for a hold-down assignment assumes the scheduled hours and non-scheduled day of the opted assignment. (See “Schedule Status,” below.)

National Arbitrator Bernstein held (H1N-3U-C 10621, September 10, 1986, C-6461) that an employee may not be denied a hold-down assignment by virtue of his or her potential qualification for overtime pay. For example, an employee who works forty hours Saturday through Thursday is eligible for a hold-down which begins on Friday even though he or she will earn overtime pay for work in excess of forty hours during the service week. If a full-time letter carrier on the ODL works overtime solely as a result of such circumstances, the overtime is

not counted or considered in determining equitability at the end of the quarter under the provisions of Article 8.5.C.2.b.

An otherwise qualified employee on light duty may not be denied hold-down assignments as long as the employee can perform all the duties of the assignment.

Some employees are not permitted to opt. Probationary employees may not opt (H8N- 2W-C 7259, November 25, 1988, M-0594). Carriers acting in 204b supervisory positions may not opt for hold-down positions while in a supervisory status (Step 4, H1N-4B-C 16840, October 24, 1983, M-0552). A national pre-arbitration settlement (H1N-5W-C 26031, January 12, 1989, M-0891) established that an employee's supervisory status is determined by Form 1723, which shows the times and dates of an employee's 204b duties.

Transitional Employees are not permitted to opt on vacant duty assignments. This issue is addressed by the parties' joint Questions and Answers on TEs, question 36. The complete TE Q&As are found on pages 7-10-7-15.

QUESTIONS AND ANSWERS (42) NALC TRANSITIONAL EMPLOYEES

The attached jointly-developed document provides the mutual understanding of the national parties on issues related to NALC Transitional Employees. This document may be updated as agreement is reached on additional matters related to transitional employees.

Date: February 20, 2009

36. Will transitional employees be allowed to opt on vacant duty assignments?
No.

Duty Assignments Eligible for Opting. Vacancies in full-time Grade One assignments, including Reserve Regular assignments, are available for opting. When a Reserve Regular letter carrier opts on an available assignment, his/her temporarily vacated Reserve Regular position becomes available for opting if vacated for five days or more. However, as is the case with any opt, a carrier on an opt for a Reserve Regular assignment must work the assignment for its duration and is not eligible to opt on any other assignments for the duration of the opt. Vacant routes under consideration for reversion are available for opting until they are reverted or filled, provided the anticipated vacancy is for five days or more. (See Step 4 HON-5R-C 6380, January 21, 1993, M-01128.)

However, not all anticipated temporary vacancies create opting opportunities. Carrier Technician positions are not available for opting because they are higher level assignments which are filled under Article 25 of the National Agreement. Auxiliary routes are not available as hold-downs because they are not full-time. (Step 4, H8N-5B-C 14553, May 15, 1981, M-00625) Full-time flexible positions are not subject to opting because they are not bid assignments.

Except where a local past practice provides for a shorter period, vacancies lasting less than five days need not be filled as hold-downs. Clarifying the meaning of this five-day requirement, National Arbitrator Kerr held that opting is permitted when vacancies are expected to include five or more *work days*, rather than vacancies that span a period of five calendar days but may have fewer than five days of scheduled work. (W1N-5G-C 11775, March 20, 1988, C-5865) However, these anticipated five days may include a holiday (H8N-4E-C 14090, July 1, 1982, M-0237)

An employee does not become entitled to a hold-down assignment until the “anticipated” vacancy actually occurs. Thus, an employee who successfully opts for a vacancy that fails to materialize is not guaranteed the assignment.

Temporarily Vacant Carrier Technician Assignments. Temporarily vacant Carrier Technician assignments are not filled under the opting provisions of Article 41.2.B.3 & 41.2.B.4. Rather, they are higher level assignments filled under the provisions of Article 25. (Step 4, H8N-3P-C 25550, May 6, 1981, M-0276)

Posting and Opting. The National Agreement does not set forth specific procedures for announcing vacancies available for hold-downs. However, procedures for announcing vacancies and procedures for opting for hold-down assignments may be governed by Local Memorandums of Understanding (LMOU) or past practice (Memorandum, February 7, 1983, M-0446). The LMOU or past practice may include: method of making known the availability of assignments for opting, method for submission, a cutoff time for submission, and duration of hold-down. In the absence of an LMOU provision or mutually agreed-upon local policy, the bare provisions of Article 41.2.B apply. In that case, there is no requirement that management post a vacancy, and carriers who wish to opt must learn of available assignments by word of mouth or by reviewing scheduling documents.

Duration of Hold-Down. Article 41.2.B.5 provides that once an available hold-down position is awarded, the opting employee “shall work that duty assignment for its duration.” An opt is not necessarily ended by the end of a service week. Rather, it is ended when the incumbent carrier returns, even if only to perform part of the duties—for example, to case but not carry mail.

Exceptions to the Duration Clause. There are situations in which carriers temporarily vacate hold-down positions for which they have opted—for example for vacation. Such an employee may reclaim and continue a hold-down upon returning to duty. (Step 4, H4N-3U-C 26297, April 23, 1987, M-0748) If the opting employee’s absence is expected to include at least five days of work, then the vacancy qualifies as a new hold-down *within* the original hold-down. Such openings are filled as regular hold-downs, such that the first opting carrier resumes his or her hold-down upon returning to duty—until the regular carrier returns.

An opting employee may bid for and obtain a new, permanent full-time assignment during a hold-down. A national prearbitration settlement (H1N-5G-C 22641, February 24, 1987, M-00669) established that such an employee must be reassigned to the new assignment. If there are five or more days of work remaining in the hold-down, then the remainder of the hold-down becomes available to be filled by another opting carrier.

An employee on a hold-down assignment may accept a temporary supervisory position (204b). However, the hold-down must be reposted for the duration of the remainder of the original vacancy provided it is for five days or more. A carrier who has accepted a 204b detail only retains the right to the hold-down until it is awarded to another letter carrier.

An employee on a hold-down assignment may voluntarily terminate the assignment to accept a higher level assignment under the provisions of Article 25. In such cases, the vacancy must be made available for opting for the duration of the original vacancy, provided it is for five days or more.

Involuntary Reassignment and Hold-Downs. The duration provision in the National Agreement generally prevents the involuntary removal of employees occupying continuing hold-down positions.

National Arbitrator Bernstein (H1N-3U-C 10621, September 10, 1986, C-06461) held that an employee may not be involuntarily removed from (or denied) a hold-down assignment in order to prevent his or her accrual of overtime pay (See "Eligibility," above). For example, suppose an employee who worked eight hours on a Saturday then began a forty-hour Monday-through-Friday hold-down assignment. Such an employee may not be removed from the hold-down even though he or she would receive overtime pay for the service week.

Article 41.1.A.7 of the National Agreement states that unassigned full-time regular carriers may be assigned to vacant residual full-time duty assignments for which there are no bidders. However, National Arbitrator Mittenthal ruled that an unassigned regular may not be involuntarily removed from a hold-down to fill a residual full-time vacancy (H1N-3U-C 13930, November 2, 1984, C-04484) Of course, management may decide to assign an employee to a residual vacancy pursuant to Article 41.1.A.7 at any time, but the employee may not be required, and may not volunteer, to work the new assignment until the hold-down ends.

Removal From Hold-Down. There are exceptions to the rule against involuntarily removing employees from their hold-downs. Part-time flexible employees may be "bumped" from their hold-downs to provide sufficient work for full-time employees. Full-time employees are guaranteed forty hours of work per service week. Thus, they may be assigned work on routes held down by part-time employees if there is not sufficient work available for them on a particular day. (H1N-5D-C 6601, September 11, 1985, M-00097)

In such situations, the part-time flexible employee's opt is not terminated. Rather, the employee is temporarily "bumped" on a day-to-day basis. Bumping is still a last resort, as reflected in a Step 4 settlement. (H1N-5D-C 7441, October 25, 1983, M-00293), which provides that:

A PTF, temporarily assigned to a route under Article 41, Section 2.B, shall work the duty assignment, unless there is no other eight-hour assignment available to which a full-time carrier could be assigned. A regular carrier may be required to work parts or "relays" of routes to make up a full-time assignment. Additionally, the route of the "hold-down" to which the PTF opted may be pivoted if there is insufficient work available to provide a full-time carrier with eight hours of work.

Another exception occurs if the Local Memorandum allows the regular carrier on a route to "bump" the Carrier Technician to another route when the regular carrier is called in on a non-scheduled day to work on his/her own route. In such cases, the Carrier Technician is allowed to displace an employee who has opted on an assignment on the technician's string if none of the other routes on the string are available. In such cases a part-time flexible employee's opt is not terminated. Rather, he/she is temporarily "bumped" on a day-to-day basis. (See Step 4, N8-N-0176, January 9, 1980, M-00154.)

PTF Pay Status and Opting. Although a part-time flexible employee who obtains a hold-down must be allowed to work an assignment for the duration of the vacancy, he or she does not assume the pay status of the full-time regular carrier being replaced. A part-time flexible carrier who assumes the duties of a full-time regular by opting is still paid as a part-time flexible during the hold-down. While they must be allowed to work the assignment for the duration of the vacancy, PTF's are not guaranteed eight hours daily or forty hours weekly work by virtue of the hold-down alone.

Nor do PTF's receive holiday pay for holidays which fall within the hold-down period by virtue of the hold-down. Rather, they continue to be paid for holidays as PTFs per Article 11.7.

Schedule Status and Opting. Employees on hold-downs are entitled to work the regularly scheduled *days* and *the daily hours of duty* of the assignment. (See H8N-1M-C 23521, June 2, 1982, M-00239.) These scheduling rights assumed by all hold-down carriers, whether full-time or part-time, create some of the most perplexing problems in the opting process. In the area of schedule status, two key distinctions must be considered. First, there is a difference between a guarantee to work and a right to days off. The second distinction involves the appropriate remedy when an opting employee is denied work within the regular hours of a hold-down.

Scheduled Days and Opting. The distinction between the guarantee to work certain scheduled days and the right to specific days off is important.

An employee who successfully opts for a hold-down assignment is said to be guaranteed the right to work the hours of duty and scheduled days of the regular carrier. It must be noted, however, that days off are “assumed” only in the sense that a hold-down carrier will not work on those days *unless* otherwise scheduled. In other words, a hold-down carrier is not guaranteed the right to *not* work on non-scheduled days. Of course, this is the same rule that applies to the assignment’s regular carrier, who may, under certain conditions, be required to work on a non-scheduled day.

For example, suppose there is a vacant route with Thursday as the scheduled day off. The carrier who opts for such a route is guaranteed the right to work on the scheduled work days, but is not guaranteed work on Thursday. This does not necessarily imply that Thursday is a guaranteed day off; the carrier on a hold-down *may* be scheduled to work that day as well, either on or off the opted-for assignment. However, management may not swap scheduled work days with days off in order to shift hours into another service week to avoid overtime or for any other reason. To do so would violate the guarantee to work all of the scheduled days of the hold-down.

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

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

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

41.2.B.6

6. Relative Seniority Standing

- (a) In cases of appointment on the same day, where there is a tie in seniority, the relative standing on the appointment register will determine the more senior carrier.

HOLD-DOWN ASSIGNMENTS—OPTING

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

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

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

Opting on Temporary Vacancies. Article 41.2.B.3, 41.2.B.4 and 41.2.B.5 provide a special procedure for exercising seniority in filling temporary vacancies in full-time duty assignments. This procedure, called “opting,” allows carriers to “hold down” vacant duty assignments of regular carriers who are on leave or otherwise unavailable to work for five or more days.

Full-time reserve, full-time flexibles and unassigned full-time letter carriers may opt on vacancies of fewer than five days where there is an established local past practice. (Article 41.2.B.3)

Eligibility for opting. Full-time reserve letter carriers, full-time flexible schedule letter carriers, unassigned full-time carriers, and part-time flexible carriers may all opt for hold-down assignments.

All unassigned regulars have opting rights, regardless of the reason for the unassigned status (Step 4, H94N-4H-C 96007241, September 25, 2000, [M-01431](#)).

**M-01431 Step 4
September 25, 2000, H94N-4H-C 96007241**

The issue in this grievance is whether unassigned regulars may opt pursuant to Article 41.2.B.3 if their unassigned status is not the result of the elimination of their duty assignment.

The parties mutually agreed that the language of Article 41.2.B.3 and 41.2.B.4 intended three categories of employees part-time flexible carriers, full-time reserve carriers, and unassigned regulars, regardless of the reason for the unassigned status.

Although Article 12.3 of the National Agreement provides that “an employee may be designated a successful bidder

no more than seven (7)times” during the contract period, a national settlement (H1N-1E-C 25953, May 21, 1984, [M-00513](#)) establishes that these restrictions do not apply to the process of opting for vacant assignments. Moreover, opting is not “restricted to employees with the same schedule as the vacant position” (H1N-1J-C 6766, April 17, 1985, [M-00843](#)). Rather, an employee who opts for a hold-down assignment assumes the scheduled hours and non-scheduled day of the opted assignment. (See “Schedule Status,” below.)

**M-00513 Step 4
May 21, 1984, H1N-1E-C 25953**

The bidding restrictions of Article 12, Section 3, pertain only to those positions posted for bid pursuant to Article 41, Section 1.B.2. Other types of local in section bidding or bidding pursuant to Article 41, Section 2.B, are not included.

**M-00843 Pre-arb
April 15, 1985, H1N-1J-C 6766**

Where temporary bargaining-unit vacancies are posted, employees requesting these details assume the hours and days off without the Postal Service incurring any out-of-schedule liability. The bargaining-unit vacancies will not be restricted to employees with the same schedule as the vacant position.

National Arbitrator Bernstein held (H1N-3U-C 10621, September 10, 1986, [C-06461](#)) that an employee may not be denied a hold-down assignment by virtue of his or her potential qualification for overtime pay. For example, an employee who works forty hours Saturday through Thursday is eligible for a hold-down which begins on Friday even though he or she will earn overtime pay for work in excess of forty hours during the service week. If a full-time letter carrier on the ODL works overtime solely as a result of such circumstances, the overtime is not counted or considered in determining equitability at the end of the quarter under the provisions of Article 8.5.C.2.b.

**C-06461 National Arbitrator Bernstein
September 12, 1986, H1N-3U-C 10621**

First Issue: “Sections 3 and 4 of Article 41.2.B allow reserve and part-time flexible letter carriers to use their seniority to obtain five day assignments. There are no exceptions or qualifications in the language that would indicate that the sections apply only to potential bidders who can work the assignments without departing from straight time pay status.”

Second Issue: “A reserve letter carrier was awarded a route that included off-days of Friday, Saturday, and Sunday during the week he worked it. However, he was assigned to work on the non-scheduled Saturday of that, to give him a full 40 hour work week. He is seeking overtime pay for being forced to work out of his assigned schedule”

HOLD-DOWN ASSIGNMENTS—OPTING

“The Union recognizes that this case has merit only if the Arbitrator decides that a reserve or part-time carrier who bids successfully on a five day vacancy thereby steps into the pay status of the carrier he or she replaced. The Arbitrator makes no such ruling. Consequently this grievance must be denied.”

M-00186 Step 4
July 25, 1979, N8-W-0010

The meaning and intent of Article 41, Section 2.B.4, of the 1978 National Agreement is to have part-time flexible letter carriers assume the hours of duty and the schedule of work days of the full-time carrier whose assignment is being covered.

M-00960 Step 4
February 7, 1990, H7N-4J-C 19083

The issue in this grievance is whether management violated the National Agreement by permitting a carrier who "opted" for an assignment under provisions of Article 41.2.B to work overtime, rather than a carrier on the overtime desired list.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. Accordingly we agreed to remand this case to the parties at Step 3 for application of Arbitrator Bernstein's award in Case No. H1N-3U-10621, et. al. (C-06461).

M-00066 Step 4
October 31, 1985, H4N-4B-C 3322

Full-time reserve carriers and part-time flexible carriers are restricted to exercising their preference for craft duty assignments under Article 41, Section 2.B.3 and 4 of the 1984 National Agreement to their bid assignment area and delivery unit assigned respectively.

M-00828 Step 4
May 24, 1988, H4N-5R-C 46648

A Part-time Flexible letter carrier "on loan" to another office must be allowed to opt for hold-down assignments in the installation from which he was loaned.

M-00091 Pre-arb
April 15, 1985, H1N-1J-C 6766

Where temporary bargaining-unit vacancies are posted, employees requesting these details assume the hours and days off without the Postal Service incurring any out-of-schedule liability. The bargaining-unit vacancies will not be restricted to employees with the same schedule as the vacant position.

An otherwise qualified employee on light duty may not be denied hold-down assignments as long as the employee can perform all the duties of the assignment.

Some employees are not permitted to opt. Probationary employees may not opt (H8N- 2W-C 7259, November 25, 1988, M-00594). Carriers acting in 204b supervisory positions may not opt for hold-down positions while in a supervisory status (Step 4, H1N-4B-C 16840, October 24, 1983, M-00552). A national pre-arbitration settlement (H1N-5W-C 26031, January 12, 1989, M-00891) established that an employee's supervisory status is determined by Form 1723, which shows the times and dates of an employee's 204b duties.

M-00594 Step 4
November 25, 1980, H8N-2W-C 7259

Probationary employees are not entitled to exercise preference rights for a hold-down duty assignment pursuant to Article XLI, Section 2.B.4.

M-00552 Step 4
October 24, 1983, H1N-4B-C 16840

While an employee is in a 204B supervisory status, he or she cannot exercise a bid preference for a temporary assignment available under Article 41, Section 2.B.3 or 2.B.4.

Transitional Employees are not permitted to opt on vacant duty assignments. This issue is addressed by the parties' joint Questions and Answers on TEs, question 36. The complete TE Q&As are found on pages 7-10-7-15.

QUESTIONS AND ANSWERS (42)
 NALC TRANSITIONAL EMPLOYEES

The attached jointly-developed document provides the mutual understanding of the national parties on issues related to NALC Transitional Employees. This document may be updated as agreement is reached on additional matters related to transitional employees.

Date: February 20, 2009

36. Will transitional employees be allowed to opt on vacant duty assignments?
 No.

See M-01701.

Duty Assignments Eligible for Opting. Vacancies in full-time Grade One assignments, including Reserve Regular assignments, are available for opting. When a Reserve Regular letter carrier opts on an available assignment, his/her temporarily vacated Reserve Regular position becomes available for opting if vacated for five days or more. However, as is the case with any opt, a carrier on an opt for a Reserve Regular assignment must work the assignment for its duration and is not eligible to opt on any other assignments for the duration of the opt. Vacant routes under consideration for reversion are available for opting until they are reverted or filled, provided the anticipated

HOLD-DOWN ASSIGNMENTS—OPTING

vacancy is for five days or more. (See Step 4 H0N-5R-C 6380, January 21, 1993, [M-01128](#).)

M-01128 Step 4 **January 21, 1993, H0N-5R-C 6380**

The issue in this grievance is whether management violated the National Agreement by not allowing carriers to opt on a route while it was under consideration for reversion.

During our discussion, we mutually agreed that routes under consideration for reversion, when they are of anticipated duration of five days or more, will be made available for opting until they are reverted or posted for bid.

M-00510 Step 4 **June 8, 1984, H1N-3P-C 30206**

Management may not utilize a PTF letter carrier on an available full-time craft duty assignment of anticipated duration of five days or more for training purposes, rather than allow employees to exercise preference by seniority pursuant to Article 41, Section 2.B., of the 1981 National Agreement.

M-00595 Step 4, April 10, 1980, N8-W-0278

Management may not refuse to allow opting as provided in Article 41, Section 2.B.3 and 2.B.4 in order to reserve the assignment for the training and performance evaluation of probationary employees.

M-00914 Step 4 **April 13 1989, H4N-2L-C 45826**

The issue in these grievances is whether management violated the National Agreement when it refused to post several potential opt assignments claiming the assignments were reserved for limited duty. We mutually agreed that no national interpretive issue is fairly presented in these cases. We further agreed that there is not authority for management to withhold routes "reserved" for limited duty.

M-00157 Pre-arb **February 28, 1980, N8-W-0101**

For Article 41, Section 2.B.3 and 4 purposes, a five day vacancy did exist even though it was not within the confines of the service week.

M-00749 Step 4 **November 22, 1982, H1N-3W-C 8041**

Available full-time regular Reserve Letter Carrier assignments of anticipated duration of five days or more are open for opting under the provisions of Article 41, Section 2.B.3. and 4. See also [M-00037](#)

However, not all anticipated temporary vacancies create opting opportunities. Carrier Technician positions are not available for opting because they are higher level assign-

ments which are filled under Article 25 of the National Agreement. Auxiliary routes are not available as hold-downs because they are not full-time. (Step 4, H8N-5B-C 14553, May 15, 1981, [M-00625](#)) Full-time flexible positions are not subject to opting because they are not bid assignments.

M-00625 Step 4 **May 7, 1981, H8N-5B-C 14553**

Article 41 Section 2B3, 4, 5 does not require management to make auxiliary routes available for opting purposes.

Except where a local past practice provides for a shorter period, vacancies lasting less than five days need not be filled as hold-downs. Clarifying the meaning of this five-day requirement, National Arbitrator Kerr held that opting is permitted when vacancies are expected to include five or more work days, rather than vacancies that span a period of five calendar days but may have fewer than five days of scheduled work. (W1N-5G-C 11775, March 20, 1988, C-05865) However, these anticipated five days may include a holiday (H8N-4E-C 14090, July 1, 1982, [M-00237](#))

C-05865 National Arbitrator Kerr **March 20, 1986, W1N-5G-C 11775**

The phrase "Craft duty assignments of anticipated duration of five (5) days or more" in Article 41.2.B 3 and 4 means assignments of work duty of five days or more rather than of work duty during the course of five days or more.

M-00237 Pre-arb **July 1, 1982, H8N-4E-D 14090**

A temporary vacancy of five (5) days or more that includes a holiday may be opted for, per Article 41, Section 2.B.

An employee does not become entitled to a hold-down assignment until the "anticipated" vacancy actually occurs. Thus, an employee who successfully opts for a vacancy that fails to materialize is not guaranteed the assignment.

Temporarily Vacant Carrier Technician Assignments.

Temporarily vacant Carrier Technician assignments are not filled under the opting provisions of Article 41.2.B.3 & 41.2.B.4. Rather, they are higher level assignments filled under the provisions of Article 25. (Step 4, H8N-3PC 25550, May 6, 1981, [M-00276](#))

M-00276 Step 4 **May 6, 1981, H8N-3P-C 25550**

Temporary T-6 positions are higher level assignments and are not subject to Article 41, Section 2.B.3-4-5. As such they are to be filled per the provisions of Article 25, National Agreement.

HOLD-DOWN ASSIGNMENTS—OPTING

Posting and Opting. The National Agreement does not set forth specific procedures for announcing vacancies available for hold-downs. However, procedures for announcing vacancies and procedures for opting for hold-down assignments may be governed by Local Memorandums of Understanding (LMOU) or past practice (Memorandum, February 7, 1983, [M-00446](#)). The LMOU or past practice may include: method of making known the availability of assignments for opting, method for submission, a cutoff time for submission, and duration of hold-down. In the absence of an LMOU provision or mutually agreed-upon local policy, the bare provisions of Article 41.2.B apply. In that case, there is no requirement that management post a vacancy, and carriers who wish to opt must learn of available assignments by word of mouth or by reviewing scheduling documents.

M-00446 Memorandum of Agreement February 7, 1983

In full and final settlement of all impasse issues pending at the regional level on the subject of filling available craft duty assignments of anticipated duration of (5) days or more pursuant to Article 41, Section 2.8.3.4, of the 1981 National Agreement, the parties hereby enter into the following agreement.

The parties at the national level hereby agree that impasses on this issue pending arbitration at the regional level are to be returned to the local parties for discussion and resolution. The parties at the local level shall meet to discuss the matter and shall develop for use locally:

- (a) A method for making known the availability of temporary assignments of an anticipated duration of (5) days or more whenever reasonable advance notice is given to the employer of the intended vacancy.
- (b) A method for submission of preference for such assignments to the delivery unit to which the employees are assigned.
- (c) A cutoff time for submission of preference by those employees wishing to be considered for available craft duty assignments of anticipated duration of (5) days or more.

Duration of Hold-Down. Article 41.2.B.5 provides that once an available hold-down position is awarded, the opting employee “shall work that duty assignment for its duration.” An opt is not necessarily ended by the end of a service week. Rather, it is ended when the incumbent carrier returns, even if only to perform part of the duties—for example, to case but not carry mail.

Exceptions to the Duration Clause. There are situations in which carriers temporarily vacate hold-down positions for which they have opted—for example for vacation.

Such an employee may reclaim and continue a hold-down upon returning to duty. (Step 4, H4N-3U-C-26297, April 23, 1987, [M-00748](#)) If the opting employee’s absence is expected to include at least five days of work, then the vacancy qualifies as a new hold-down within the original hold-down. Such openings are filled as regular hold-downs, such that the first opting carrier resumes his or her hold-down upon returning to duty—until the regular carrier returns.

M-00748 Step 4

April 23, 1987, H4N-3U-C 26297

Whereas the original opting employee went on vacation for five days or more within the original opting duration, the assignment should have been made available as a hold-down to other employees during the absence. Upon return from the annual leave of five days or more, the employee who first opted for the vacancy should have been allowed to return to the hold-down for completion of the original vacancy duration. See also [M-00268](#)

C-09187 National Arbitrator Britton

July 21, 1989, H4N-1W-C 34928

For the reasons given, the grievance is sustained and the Employer is directed to adhere to the findings made herein, namely, that a part-time flexible city letter carrier on a hold-down who accepts a 204b detail retains the contractual right to the hold-down until the hold-down is awarded to another carrier pursuant to the provisions of Article 41, Section 2B4 of the National Agreement; and under the language of Article 41, Section 1.A.1, within five working days of the day that the hold-down becomes vacant as a result of a carrier accepting a 204b detail, the hold-down must be reposted for the duration of the remainder of the original vacancy.

An opting employee may bid for and obtain a new, permanent full-time assignment during a hold-down. A national prearbitration settlement (H1N- 5G-C 22641, February 24, 1987, [M-00669](#)) established that such an employee must be reassigned to the new assignment. If there are five or more days of work remaining in the hold-down, then the remainder of the hold-down becomes available to be filled by another opting carrier.

M-00669 Step 4

February 24, 1987, H1N-5G-C 22641

Full-time reserve and unassigned regular letter carriers occupying a hold-down position pursuant to the provisions of Article 41.2.B.3 have the right to bid for a full-time duty assignment. If such letter carrier is the successful bidder, he shall be placed into the duty assignment pursuant to the provisions of Article 41.1.C.3. The resultant vacant hold-down will be filled pursuant to the provisions of Article 41.2.B.3-5, provided the anticipated duration of the resultant vacancy is of five (5) days or more.

HOLD-DOWN ASSIGNMENTS—OPTING

An employee on a hold-down assignment may accept a temporary supervisory position (204b). However, the hold-down must be reposted for the duration of the remainder of the original vacancy provided it is for five days or more. A carrier who has accepted a 204b detail only retains the right to the hold-down until it is awarded to another letter carrier.

An employee on a hold-down assignment may voluntarily terminate the assignment to accept a higher level assignment under the provisions of Article 25. In such cases, the vacancy must be made available for opting for the duration of the original vacancy, provided it is for five days or more.

Involuntary Reassignment and Hold-Downs. The duration provision in the National Agreement generally prevents the involuntary removal of employees occupying continuing hold-down positions.

National Arbitrator Bernstein (H1N-3U-C 10621, September 10, 1986, [C-06461](#)) held that an employee may not be involuntarily removed from (or denied) a hold-down assignment in order to prevent his or her accrual of overtime pay (See "Eligibility," above). For example, suppose an employee who worked eight hours on a Saturday then began a forty hour Monday-through-Friday hold-down assignment. Such an employee may not be removed from the hold-down even though he or she would receive overtime pay for the service week.

Article 41.1.A.7 of the National Agreement states that unassigned fulltime regular carriers may be assigned to vacant residual full-time duty assignments for which there are no bidders. However, National Arbitrator Mittenthal ruled that an unassigned regular may not be involuntarily removed from a hold-down to fill a residual full-time vacancy (H1N-3UC-13930, November 2, 1984, [C-04484](#)) Of course, management may decide to assign an employee to a residual vacancy pursuant to Article 41.1.A.7 at any time, but the employee may not be required, and may not volunteer, to work the new assignment until the hold-down ends.

C-04484 National Arbitrator Mittenthal November 2, 1984, H1N-3U-C 13930

A carrier who successfully opts for an assignment is entitled to work the assignment for its duration, and management may not prematurely terminate the temporary assignment to move the carrier to a permanent assignment pursuant to Article 41, Section 1.A.7.

M-00791 Pre-arb October 29, 1987, H4N-3F-C 45541

1) Full-time flexible letter carriers may exercise their preference by use of seniority for available craft duty assignments in accordance with the provisions of Article 41.2.B.3.

2) Notwithstanding the foregoing, if, prior to the exercise of his/her preference, a full-time flexible employee has been assigned a schedule for a service week by the preceding Wednesday in accordance with the Article 7 Memorandum of Understanding dated February 3, 1981, then the employee shall remain in that assignment for the balance of the service week before assuming the opted-for assignment.

3) In no event shall the employee be prevented from assuming the opted-for assignment for a period of more than one week.

Removal From Hold-Down. There are exceptions to the rule against involuntarily removing employees from their hold-downs. Part-time flexible employees may be "bumped" from their hold-downs to provide sufficient work for full-time employees. Full-time employees are guaranteed forty hours of work per service week. Thus, they may be assigned work on routes held down by part-time employees if there is not sufficient work available for them on a particular day. (H1N-5D-C 6601, September 11, 1985, [M-00097](#))

M-00097 Pre-arb September 6, 1985, H1N-5D-C 6601

Management may assign a reserve carrier to a temporary assignment of 5 days or more rather than honor the request of a part-time flexible provided it can be demonstrated that honoring the opt would result in insufficient work for the full-time regular.

In such situations, the part-time flexible employee's opt is not terminated. Rather, the employee is temporarily "bumped" on a day-to-day basis. Bumping is still a last resort, as reflected in a Step 4 settlement. (H1N-5D-C 7441, October 25, 1983, [M-00293](#)), which provides that:

A PTF, temporarily assigned to a route under Article 41, Section 2.B, shall work the duty assignment, unless there is no other eight-hour assignment available to which a full-time carrier could be assigned. A regular carrier may be required to work parts or "relays" of routes to make up a full-time assignment. Additionally, the route of the "hold-down" to which the PTF opted may be pivoted if there is insufficient work available to provide a full-time carrier with eight hours of work.

M-00293 Step 4 October 25, 1983, H1N-5D-C 7441

A PTF, temporarily assigned to a route under Article 41, Section 2B, shall work the duty assignment, unless there is no other eight-hour assignment available to which a full-time employee could be assigned. A regular carrier may be required to work parts or "relays" of routes to make up a full-time assignment. Additionally, the route of the "hold-down" to which the PTF opted, may be pivoted if there is insufficient work available to provide a full-time carrier with

HOLD-DOWN ASSIGNMENTS—OPTING

eight hours of work. Absent the above conditions, the PTF who exercised a bid preference and was awarded the assignment in accordance with Article 41, Section 2B4, shall work that duty assignment for its duration.

M-00531 Step 4

December 5, 1984, H1N-1N-C 23934

Once an employee has been assigned to a "hold-down" pursuant to the local procedures established in accord with the above-referenced memorandum, such employee should not be bumped from that assignment except to provide an 8-hour assignment to a full-time regular employee who would otherwise be insufficiently employed. See also [M-00521](#), [M-00289](#), [M-01211](#), [M-00238](#), [M-00375](#)

M-00917 Step 4

April 13 1989, H7N-4G-C 7520

We further agreed that a PTF temporarily assigned to a route under Article 41.2.B., shall work the duty assignment, unless there is no other eight hour assignment available to which a full time employee could be assigned. A regular carrier may be required to work parts or "relays" of routes to make up a FT assignment. Additionally, the route of the hold-down to which the PTF opted, may be pivoted if there is insufficient work available to provide a FT carrier with eight hours of work. Absent the above conditions, the PTF who exercised a bid preference and was awarded the assignment in accordance with Article 41.2.B.4., shall work that duty assignment for its duration.

M-01500 Pre-arb

October 8, 2003, H98N-4H-C-01216386

The issue in this grievance is whether management violated Article 41.2.B.4 of the National Agreement, when a part-time flexible (PTF) city letter carrier was taken off a "hold-down" assignment to provide work to a full-time city letter carrier on limited duty.

After reviewing this matter, we mutually agree that no national interpretive issue is presented in this case. We agree to remand this case to Step B with the following understanding.

Full-time employees when on limited duty as a result of a job-related illness or injury, may "bump" a PTF on a "hold-down" assignment (or portion of hold-down assignment) only if the duties on the "hold-down" assignment are included in the written/verbal (see ELM 545.32) limited duty assignment and there is no other work available to satisfy the terms of the limited duty assignment.

Consistent with page 41-13 of the Joint Contract Administration Manual the opt is not terminated the PTF is "bumped" on a day-to-day basis.

M-01126 Step 4

April 15, 1993, H7N-5R-C 32586

We agreed that management may not remove a part-time flexible carrier from a hold-down assignment solely to avoid the payment of penalty overtime pay. We also agreed that this does not limit management's right to remove a PTF carrier from a hold-down if there is insufficient work available to provide a full-time carrier with eight hours work.

Another exception occurs if the Local Memorandum allows the regular carrier on a route to "bump" the Carrier Technician to another route when the regular carrier is called in on a non-scheduled day to work on his/her own route. In such cases, the Carrier Technician is allowed to displace an employee who has opted on an assignment on the technician's string if none of the other routes on the string are available. In such cases a part-time flexible employee's opt is not terminated. Rather, he/she is temporarily "bumped" on a day-to-day basis. (See Step 4, [N8-N-0176](#), January 9, 1980, [M-00154](#).)

M-00154 Step 4

December 14, 1979, N8-N-0176

In the office in question when the regular route carrier is called in on his off-day to work his own route, he bumps the utility carrier to one of the other four routes in his string of routes. To enable the utility carrier to achieve the essence of his bid assignment, he will be allowed to displace an employee who has opted to cover an assignment under the provisions of Article 41, Section 2.B.3,4 and 5 as long as such route is one of the utility carrier's string of routes and if none of the other routes in his string are available.

Note: Whether or not the above settlement is applicable in a specific office can only be determined by referring to the applicable Local Memorandum of Understanding.

PTF Pay Status and Opting. Although a part-time flexible employee who obtains a hold-down must be allowed to work an assignment for the duration of the vacancy, he or she does not assume the pay status of the full-time regular carrier being replaced. A part-time flexible carrier who assumes the duties of a full-time regular by opting is still paid as a part-time flexible during the hold-down. While they must be allowed to work the assignment for the duration of the vacancy, PTF's are not guaranteed eight hours daily or forty hours weekly work by virtue of the hold-down alone.

Nor do PTF's receive holiday pay for holidays which fall within the hold-down period by virtue of the hold-down. Rather, they continue to be paid for holidays as PTFs per Article 11.7.

HOLD-DOWN ASSIGNMENTS—OPTING

Schedule Status and Opting. Employees on hold-downs are entitled to work the regularly scheduled days and the daily hours of duty of the assignment. (See H8N-1M-C 23521, June 2, 1982, [M-00239](#).) These scheduling rights assumed by all hold-down carriers, whether full-time or part-time, create some of the most perplexing problems in the opting process. In the area of schedule status, two key distinctions must be considered. First, there is a difference between a guarantee to work and a right to days off. The second distinction involves the appropriate remedy when an opting employee is denied work within the regular hours of a hold-down.

M-00239 Step 4

June 2, 1982, H8N-1M-C 23521

A part-time flexible who, pursuant to Article 41, Section 2.B of the 1978 National Agreement, has selected a craft duty assignment by exercise of seniority shall work that duty assignment for its duration. This includes the daily hours of duty of the assignment. See also [M-01394](#).

Scheduled Days and Opting. The distinction between the guarantee to work certain scheduled days and the right to specific days off is important. An employee who successfully opts for a hold-down assignment is said to be guaranteed the right to work the hours of duty and scheduled days of the regular carrier. It must be noted, however, that days off are “assumed” only in the sense that a hold-down carrier will not work on those days unless otherwise scheduled. In other words, a hold-down carrier is not guaranteed the right to not work on non-scheduled days. Of course, this is the same rule that applies to the assignment’s regular carrier, who may, under certain conditions, be required to work on a non-scheduled day.

For example, suppose there is a vacant route with Thursday as the scheduled day off. The carrier who opts for such a route is guaranteed the right to work on the scheduled work days, but is not guaranteed work on Thursday. This does not necessarily imply that Thursday is a guaranteed day off; the carrier on a hold-down may be scheduled to work that day as well, either on or off the opted-for assignment.

However, management may not swap scheduled work days with days off in order to shift hours into another service week to avoid overtime or for any other reason. To do so would violate the guarantee to work all of the scheduled days of the hold-down.

M-00404 Step 4

February 21, 1980, N8-W-0216

Employees assuming the temporary assignment will assume the work schedule of the regular carrier including off-days and reporting time.

M-00686 Step 4

July 8, 1983, H1N-5B-C 11222

It is management's position that although the grievant was awarded a five-day "hold-down" assignment that could have resulted in a short work week, the proper remedy was to adjust the schedule by having the employee work one of the non-scheduled days. Furthermore, because this adjustment was made to eliminate an under-time situation, the grievant is not entitled to out-of-schedule premium.

M-00353 Step 4

May 24, 1985, H1N-5G-C 24094

A reserve carrier who does not opt for a "hold-down" shall nonetheless assume the schedule of the "hold-down" if management elects to assign the reserve carrier to the route or assignment anyway.

This settlement establishes the schedule a reserve letter carrier should work if assigned to a hold-down by management. It does not waive the carrier's entitlement to out-of-schedule pay. See [M-00940](#)

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

In those circumstances in which a PTF worked forty hours per week during the opting period (or forty-eight hours in the case of a six day opt), an instructional “cease and desist” resolution would be appropriate.

This would also be an appropriate remedy in those circumstances in which a reserve letter carrier or an unassigned letter carrier was denied an opt in violation of Article 41.2.B.3.

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

HOLD-DOWN ASSIGNMENTS—OPTING**Remedy for violations****C-05287 Regional Arbitrator Rotenberg****November 1, 1985, C4N-4K-C 4007**

Where management improperly refused to honor opting requests of two PTFS carriers, management is ordered to make the carriers whole for any losses suffered as a result.

C-05821 Regional Arbitrator Rotenberg**March 24, 1986, C4N-4F-C 5526**

Where a PTFS carrier was bumped off opted-for assignment by regular called in to work, and where the PTFS was worked only six hours as a result, the PTFS is awarded two hours pay.

M-00720 Pre-arb**January 27, 1982, H8N-4E-C 13406**

The grievants (PTFS) were properly assigned in accordance with Article 41, Section 2.B.4. The grievants should have worked the assignments in question for the duration without changing days off of the assignment. Since the grievants worked on a scheduled day off, they should have worked six days in the week in question. Therefore, each grievant will be compensated for 8 hours of pay at the overtime rate in effect at the time the dispute arose. See also [M-00227](#), [M-00232](#), [M-00473](#), [M-00474](#).

Regional Arbitration Awards: The following awards are among those which held that monetary awards were appropriate remedies for violations of employees' rights to opt:

C-04739 Leventhal, March 28, 1985**C-05287** Rotenberg, November 1, 1985**C-05821** Rotenberg, March 24, 1986**C-06142** Britton, May 9, 1986**C-06339** Dennis, June 19, 1986**C-06395** Stephens, August 8, 1986**C-06904** Jacobowski, March 6, 1987**C-07001** Searce, April 8, 1987**C-10181** Sobel, July 23, 1990**C-10264** Parkinson, Sept. 4, 1990**C-10710** Taylor, March 15, 1991