

ACTIVIST

NALC

A NEWSLETTER FOR BRANCH LEADERS OF THE NATIONAL ASSOCIATION OF LETTER CARRIERS
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Excessing and carriers' rights



Automation and the implementation of DPS affect letter carriers throughout the country in a variety of ways--including changing the Postal Service's staffing requirements. In these times of change, carriers may not fully realize the protections offered by the *National Agreement* against unnecessary or overly abrupt relocations of career letter carriers as contained in the excessing and withholding provisions of Article 12. These provisions have been a part of the contract for many years, but the need to know and apply these provisions is only now becoming urgent as automation drives sweeping changes in carrier complements across the country.

Viewed from a broad perspective, the excessing provisions of Article 12 protect career postal employees from being laid off. In other industries, layoffs would be the obvious solution to the kinds of change affecting the Postal Service today. However, excessing and its counterpoint, withholding of jobs in anticipation of excessing, provide a way to reduce the number of career employees in specific units where necessary while still maintaining jobs for those employees in a different unit.

Understanding exactly what Article 12 says can be difficult. Its language is inherently complicated because it was negotiated to apply in a variety

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Time management strategies that work

Chances are that if you're an NALC steward or branch officer, you've already checked out the vast array of time-saving books and gadgets on the market today. Time management is the hot new topic, with getting-organized books probably outstripping diet and exercise books in sheer volume. And there are also the special notebooks, desk organizers, computer software programs and electronic organizers you can buy. Seems anybody can get

organized—if only they have the time to evaluate and choose a system from all these offerings.

Relax. You don't have to invest hundreds of dollars and months of reading time to find the right time-management strategy for you. In fact, you are probably already using effective techniques.

"I've never missed a deadline and can't remember a time when I forgot an important date," says Eau Claire, *continued on page 2*

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Time management

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Wisconsin Branch 728 president Pat Cumming. In addition to leading the branch's 175 members, Cumming is steward at two associate offices, editor of three newsletters (one for the branch, one for the state, and the third for the local AFL-CIO labor council), executive board member of the Wisconsin State Association, legislative liaison and local business agent for the Minneapolis Region. He carries mail fulltime and—certainly not least among his priorities—is a husband and father of three children.

Cumming is the first to admit he has no formal system for managing his time. "My desk is horrible, piles and piles of things," he says. When he tried filing things away, they got lost—permanently. "And I've never had any luck with organizers, things like Day-Timers," he says. "They're too big and bulky, and I move around too much." Instead, he makes notes on file cards he carries in his shirt pocket.

Instead of following some elaborate system for planning and organizing time, Cumming and many other successful NALC branch leaders adhere to a few simple rules: **Have clear priorities, recognize and accept your personal organizational style** and above all, **be flexible**. In this story, you'll read advice on implementing these guidelines not only from NALC branch leaders but also from time management experts whose recent books reflect the trend toward "doing your own thing" with time management (see the box on page 4 for suggestions for additional reading).

First things first

There's a story about a woodcutter who got a new ax. The first day, he

was able to cut down 20 trees. With each passing day, he worked longer and harder, while chopping down fewer trees. A friend wandered by and suggested, "Why don't you sharpen your ax?" The woodcutter replied, "I'm too busy. I've got to chop down more trees!"

If you can identify with that woodcutter, it may be time to slow down and sharpen your ax. Take some time to think about what's really important—not only in your union job, but also in your life. Naturally you'll want to meet every grievance deadline—but what else would you like to do? What are your goals—and what are your values? If you are going to maintain your effectiveness as a union representative over the long haul, you will need to recognize and respect the aspects of your life that fuel and energize you.

"For me, it comes down to two things—spending time with my family and making sure members of my branch are taken care of," says John Cowan, president of Wilmington, North Carolina Branch 464. In addition to that job, which carries with it full responsibility for all Step 2 grievances in the 205-member branch, Cowan is Eastern North Carolina's representative to the state association, an arbitration advocate for the Atlanta Region and is on call to provide advice and grievance-handling for small branches in the state. And he continues to carry mail.

At the top of Cowan's list, however, is time for his family. He formally schedules at least an hour at the end of every workday to spend with his wife, also a letter carrier. Gadgets prove useful to Cowan; when he travels, he carries a pager and a mobile phone so family and branch officers can reach him. He also keeps current in three calendars—a pocket planner and desk calendars at his home and at the branch office.

"I used to be an accountant," Cowan says, "so I like to have things written down." Every morning he takes a few minutes to write a list of the tasks he'd like to accomplish that day—but admits that in the nine years he's been branch president, he's never been able to finish a list in a single day. "The list is like an anchor," he says. "I'm always getting distracted with phone calls or emergencies, but I can go back to the list and remind myself of what's important, what I need to do."

Know thyself

For branch leaders like John Cowan, lists and up-to-date calendars provide a level of organization and order that feels comfortable and works effectively. Other people, however, may feel constantly frustrated and upset because they cannot consistently keep up with any kind of calendar or accomplish much of anything on a to-do list.

"People say to finish what you begin, stay on track, never write on little pieces of paper that can get

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lost," notes Lynn Brech, president of Sioux Falls, South Dakota Branch 491. "None of that advice works for me." Brech, who's been president of the 176-member branch, the largest in the state, for 18 years, says that first he is a husband and father of two teenagers. He carries mail, writes a newsletter for the state association and is organizing coordinator for the Minneapolis Region.

"There's no way that I can finish one of those things before moving on to the next," he says. "I've always got two or three things going at once. Everything builds on everything else—I may be working on a grievance, and from that grievance I'll get an idea for a newsletter article. So I go back and forth."

For Brech, self-sticking notes are at least part of the answer. "If something is important, I'll put a Post-It note close to the front door," he says. "If it's *very* important, the Post-It note goes on the steering wheel of the car."

Brech recognizes that he is probably what one time-management expert calls a **polychronic** individual—someone who thrives on multiple time-pressures and responsibilities. Polychronic people like to have a lot of irons in the fire, and seem to work more effectively when pursuing several tasks at once. In contrast, **monochronic** people get satisfaction from concentrating on one job at a time and being able to finish a task and cross it off a list.

It's important to recognize which type you are, Brech says. Many people feel most comfortable with a high level of organization and function best when they keep to a schedule and a prioritized list of tasks. Other people may be able to schedule and prioritize some part of their workday, but often find themselves taking on other tasks and spending time with problems that aren't on their initial schedules. Neither type is better than the other, they're simply different.

Perhaps one of the most difficult challenges facing union activists is dealing with the unexpected—the crisis or emergency that boils up out of nowhere. Polychronic people may have a bit of an advantage in such situations because they function best when handling several issues at once. If you are a more monochronic type, you may need to exert extra effort—and learn to accept the fact that your schedule for the day has been disrupted.

"You need to find a way of working that feels right for you," Brech says. "It's better to do the job, period, than to worry about whether you're doing it just right—meeting some impossible standard that you set up for yourself."

For Eau Claire, Wisconsin's Pat Cumming, for example, clutter is a way of life. "I like having all my stuff around me, where I can see it," he says. "I'm used to working that way." Cumming admits that sometimes he needs to search for things, but has realized that losing a

USPS

BY THE NUMBERS

Estimates for Accounting Period 13 (Sept. 1997)

<u>USPS Operations</u>	<u>Number</u>	<u>Chg from SPLY*</u>
Total mail volume year-to-date (YTD) (billions of pieces)	189.4	3.7%
Mail volume by class (YTD in billions)		
<i>First-class</i>	98.6	1.4%
<i>Priority Mail</i>	1.1	12.4%
<i>Express Mail</i>	0.1	6.6%
<i>Periodicals</i>	10.4	2.7%
<i>Standard A (bulk)</i>	77.0	7.2%
<i>Standard B (parcels)</i>	1.0	3.4%
<i>International</i>	0.9	-8.3%
Daily DPS letter mail volume (pieces)	123 million	51.5%
<i>Percent of total letter mail</i>	28%	—
City routes with DPS mail	107,632	29.1%
<i>Percent of total</i>	62.9%	—
Daily delivery points (millions)	128.8	1.4%
<i>Percent city</i>	75.6%	—
<i>Percent rural</i>	24.3%	—
City carrier routes	170,170	-1.0%
Rural carrier routes	58,267	5.4%
Net Income (\$millions, YTD)	\$ 1,200	-23.4%
<i>Total Revenue</i>	\$57,825	2.3
<i>Total Expense</i>	\$56,626	3.0
<u>Employment/Wages</u>		
City Carrier employment	238,280	-1.8%
<i>Percent union members</i>	91.5%	—
<i>Percent career employees</i>	98.2%	—
City carrier casual/TE employment		
<i>Casuals</i>	7,333	29.9%
<i>Percent bargaining unit</i>	3.1%	—
<i>Transitionals</i>	4,279	21.5%
<i>Percent bargaining unit</i>	1.8%	—
City carriers per delivery supervisor	19.8	-4.8%
Career USPS employment	763,647	0.2%
City carrier avg. straight-time wage	\$16.88/hr.	2.7%
City carrier overtime ratio (overtime/total work hours)	11.4%	—
<i>Ratio SPLY</i>	10.9%	—

*SPLY = Same Period Last Year

This information compiled by the NALC Research Department from USPS Reports.

bit of time hunting through piles is ultimately easier on his nerves than constantly trying—and failing—to keep a clean desk.

“I think you've got to learn to live with yourself,” Cumming says. “That's the only time-management secret I've got to pass on. And when you get too stressed-out, go win a grievance. That's what keeps me going.”

Go with the flow

These branch leaders may not realize it, but they are right at the cutting edge of current thinking about time management. Business advisor Ken Blanchard (*The One-Minute Manager*) notes in a recent article, “Effective managers and executives

tend to have lots of interruptions during the day...the most important part of their jobs is being available to others.”

For such people, Blanchard writes, hard-and-fast rules for managing time simply will not work. “To-do lists, post-it reminders, calendar tie-ins and project planning software are all useful time management tools,” he writes. “Working on the next item that pops into your head, focusing on one high-priority item at a time, having a group work on a task, or doing a number of items as quickly as possible can also be effective time management approaches.”

The key, says Blanchard, is to *be willing to switch to a new method when what you're doing is not working*. If you constantly feel frustrated

with a certain time management system, try something different. Or use different systems for different tasks. You may need a list, for example, to track all pending grievances. To pursue more creative goals—writing newsletter articles, for example—you may need a looser, less structured approach. In fact, purposely building some down-time into your schedule may be essential for some NALC local leaders.

“I'll never have a cell phone,” says Sioux Fall's Lynn Brech emphatically. “I need the time in my car to think, to meditate, really.” He uses his drive-time—sometimes as much as five hours in wide-open South Dakota—to focus and clarify his plans. “That's when I think about goals, or mentally put together newsletter articles,” he says.

Time out

As Brech and other NALC local leaders have realized, time doesn't have to be an enemy to be wrestled to the ground with lists, schedules and planners. By giving yourself permission to work in the way you feel most comfortable, accepting the fact that you may never get everything done—and especially, done perfectly—and being willing to try new methods when the old ones don't work, you may surprise yourself by discovering wellsprings of new energy and enthusiasm.

“When you take on a union job—any union job—you've got to see it in perspective with the rest of your life,” says Wilmington's John Cowan. “Yes, it is a lot of work and sometimes you may have to give it more time and energy than you'd like. But it's important to say to yourself every night that you've done the best you can—whatever that may be. Accept where you are, enjoy it as much as you can, and relax.”

For more information...

The business section of any bookstore or library is loaded with time-management books of all kinds. Here are a few whose authors seem to understand the special demands faced by people like union stewards and leaders:

Time Management for Unmanageable People, by Ann McGee Cooper. Subtitled “The Guilt-Free Way to Organize, Energize and Maximize Your Life,” this book goes beyond the usual list of do's and don'ts to talk about why people have trouble getting organized. For example, the Introduction is titled, “If it's so great, why doesn't it work for all of us?” Included is an explanation of monochronic and polychronic types of jobs and people. (Bantam Trade Paperback, 1995)

How To Be Organized In Spite Of Yourself, by Sunny Schlenger and Roberta Roesch. This book explores different kinds of organizational

styles, from the Hopper (bounces from project to project) to the Cliff Hanger (waits till the last possible minute to get things done). Its authors stress recognizing your own style and include lots of self-tests to help you decide which style is yours. The book offers practical suggestions for getting things done while still maintaining your own style. (New American Library, 1989)

Time Management for Dummies, by Jeffrey J. Mayer. Despite the insulting title, this book contains much useful information for people who feel comfortable with traditional approaches to time management. Mayer stresses the creation of a “master list” to contain all your immediate and long-range goals. He also offers a wealth of advice about streamlining communication and turning your computer into a time-management resource. (IDG Books, 1995)

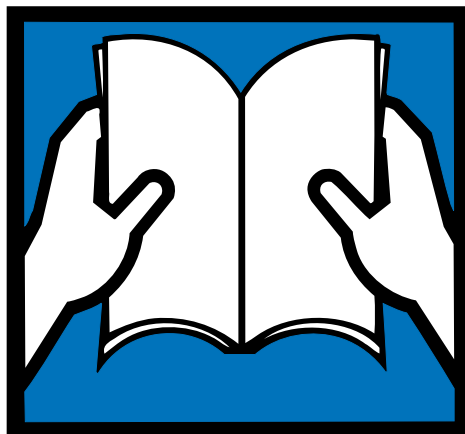
The case of the unchanged route

Changes and confusion surrounding the implementation of Delivery Point Sequencing (DPS) affect thousands of letter carriers every day. To help carriers sort out exactly what is happening and why, the NALC branch leader must know all aspects of the process. Especially important is a clear understanding of the meaning of key provisions about the implementation of DPS that appear in the *National Agreement*, Memorandums of Understanding, the M-39, *Management of Delivery Services*, and the M-41, *City Delivery Carriers' Duties and Responsibilities*.

A recent regional level arbitration decision (C-15655) illustrates not only the importance of correct interpretation of such language but also reveals some of the ways Postal Service management attempts to circumvent the meaning and intent of DPS provisions mandating both parties' involvement in the process. In particular, this case shows that even though management made an initial adjustment prior to implementing DPS, the Postal Service still had an obligation to go back within 60 days after DPS had been implemented to reexamine the route and readjust it to as near eight hours as possible.

The facts

The circumstances leading to this grievance began in May 1994, when Postal Service management at a city delivery station instituted a regular count and inspection of all routes in that station prior to implementing DPS. During this inspection, two route inspectors informed one carrier, who became the grievant in this case, that his route was overburdened.



Postal Service managers met several times with the carrier to discuss how to bring the route back to 8 hours.

In July, route adjustments took effect, and at this time part of the grievant's route was transferred to an auxiliary route. DPS was implemented shortly thereafter. Despite the adjustment and the introduction of DPS, the grievant continued to work an average of 35 minutes overtime three days each week. In mid-November, the NALC filed a grievance on behalf of the carrier, stating that the employer should have reexamined and readjusted the grievant's route within 60 days of the date DPS was implemented. During a Step 2 meeting management admitted the route was out of adjustment and stated that it had no idea when adjustments could be made.

On February 10, Postal Service management announced route readjustments to take effect on February 18 that would bring the grievant's route to 8 hours.

Union arguments

The NALC based its case on language appearing both in the M-39 and in a joint Memorandum of

Understanding signed in September 1992. The M-39 provision, Section 243.614, states that **“within 60 days of implementing the planned adjustments...the parties will revisit those adjustments to ensure that routes are as near to 8 hours daily as possible.”** The M-39 goes on to state that if the routes are not properly adjusted, adjustments will be made in accordance with the September 1992 Memorandum of Understanding.

The relevant section of the September 1992 memo states also,

“The Postal Service has an obligation to go back to the route within 60 days.”

“Within 60 days of implementing the planned adjustments for future automated events, the parties will revisit those adjustments to ensure that ...[they] are as near to 8 hours daily, as possible.”

In fact, the union stated, no adjustments were made to the grievant's route until February 18, 1995, more than six months after the initial route adjustment. As a remedy, the NALC advocate requested that the Postal Service pay the grievant double time for all overtime worked.

USPS arguments

The Postal Service advocate argued that although it was true that no formal route adjustment was made on the grievant's overburdened route until February, management at the station was "constantly" revisiting and reevaluating that route and others in the station. The advocate stated that the NALC was "repeatedly made aware" of these reevaluations.

The Postal Service also argued that although language in the M-39 and the September 1992 MOU mandate that routes be **revisited** within 60 days of the initial adjustments for DPS, that language does not specifically state that **readjustments** be made within that 60-day period. The

**Both parties...
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advocate stated, "Further and as a practical matter, readjustments should be studied before made and, therefore, implementation could not be required within the described 60-day period."

The arbitrator rules

In reaching his decision, the arbitrator examined not only the specific language cited by both parties, but also other documents pertaining to route adjustments made in anticipation of DPS. Most applicable to this case, the arbitrator stated, is a passage

from a joint publication, *Building Our Future By Working Together*, which consists of six MOUs dealing with the transition to DPS. The arbitrator quoted from Chapter 3 of this publication, which states in part, "Within 60 days after implementing the route realignment, the local parties must reexamine the adjustments to ensure that routes are as near to eight hours as possible. **If not, they must be adjusted in accordance with the M-39.**" [emphasis added]

This language means that **both parties**, working together, must reexamine and readjust the routes. However, in this case, the arbitrator found that although management stated that it had gone back to the grievant's route "constantly" for purposes of reexamination, the Postal Service had never formally notified the union that such reexaminations were performed. Testimony by the station manager revealed that the manager considered that the contractual requirement to work with the union was met by "speaking with carriers daily about readjustments and taking daily looks at routes," the arbitrator wrote.

"The problem that I have with [these] responses," the arbitrator went on, "is that they were all unilateral. It is one thing to communicate with affected employees about the adjustments. It is another to not communicate directly with the Union." The arbitrator noted that the union had twice requested information from Postal Service management and yet never received any information directly.

The arbitrator clarified the point that joint reexamination is required even when the parties have selected the unilateral, rather than the X-route, approach to route readjustment. The arbitrator noted that the description of the unilateral process is silent about the question of post-realignment readjustments. Therefore, the language of Chapter 3 as cited above applies in

such cases. Postal Service management working jointly with the NALC should have reexamined and readjusted the grievant's route within the 60-day period. The arbitrator therefore sustained the grievance and ordered as remedy that the grievant be paid double time for all overtime worked

**The union must
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between November 15, 1994 and February 18, 1995.

Note to stewards

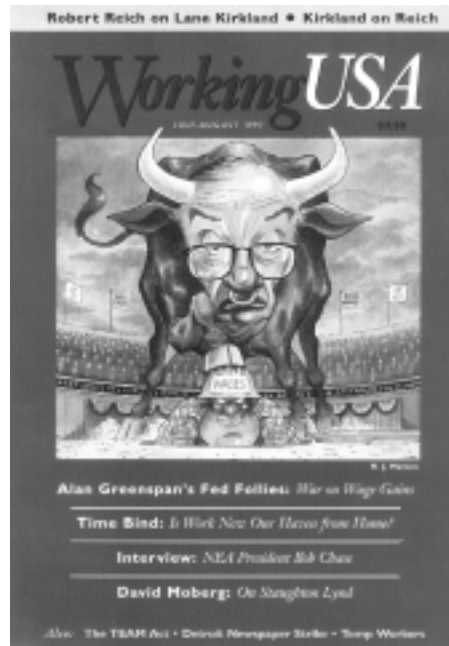
NALC branch leaders face a continuing challenge as carriers undergo the stress and disorientation of route adjustments in anticipation of DPS. It's important in such situations that local union leaders have a clear grasp of basic principles. This case deals with one aspect of the process--the mandate for both parties to return to readjusted routes within 60 days to reexamine these routes and, if necessary, readjust any overburdened route to eight hours. Also, as the arbitrator stated, it is not enough for management to informally discuss route changes with the carrier or carriers involved within that 60-day period. The union must be notified and be a part of any reexamination and readjustment. ■

New tools for union leaders

These days you hear a lot about the rebirth of the labor movement, with analysts talking about the success of the recent strike against UPS and other positive signs. Perhaps yet another hopeful indication of labor's growing influence is the appearance of new books and magazines targeted at union activists. Here are capsule reviews of two recent publications, a magazine titled *Working USA* and a book for union stewards, *The Union Steward's Complete Guide*.

■ *Working USA*, which began publication this spring, is a bi-monthly journal containing a broad mix of thoughtful and provocative articles about today's unions. It's edited by Don Stillman, an award-winning labor journalist who's worked for the United Mine Workers and the United Automobile Workers.

In his introductory Letter From the Editor, Stillman writes, "Today, unions face huge problems, some of which may be insurmountable, yet they are moving to confront these difficulties. *Working USA* intends to be a part of that process — we want to be a vehicle where the old shibboleths can be demolished and new truths



created...where unionists can benefit from new research and thinking being done on campuses and elsewhere."

The May-June issue contains articles dealing with workers as commodities, the global economy, organizing low-wage workers, workplace "empowerment," and labor on the Internet. Subscriptions are \$45 a year; to order call 1-800-541-6563.

■ *The Union Steward's Complete Guide* is a collection of useful articles

from the past five years or so of the newsletter, *Steward Update*, edited by David Prosten. Founded in 1989, *Steward Update* is now read by more than 40,000 stewards from a variety of American unions.

The *Complete Guide* includes sections dealing with basic problems confronting stewards everywhere, such as stewards' responsibilities and legal rights, mistakes to avoid, dealing with management bullies as well as difficult co-workers, and managing time and stress. There are also chapters devoted to the most common kinds of grievances, advice for grievance meetings, and how to handle health and safety issues. The final chapter is a grab-bag of "special issues," including how to counter anti-union arguments, complaints about dues and "free riders," and how to deal with sexual harassment, medical claims, drug and alcohol abusers, and smoking in the workplace.

The 226-page softbound book costs \$19.95 plus \$3 for shipping and handling. Order by writing Union Communication Services Order Department, 13 Francis Street, Annapolis, MD 21401. For credit card orders, call 1-800-321-2545. ■

Excessing

continued from page 1

of different situations. Adding to the complexity is the fact that Article 12 is not clearly organized. As a result, NALC representatives may have difficulty in sorting out the diverse and sundry aspects of excessing.

This story will attempt to clarify contract language concerning excessing by discussing **general rules** that appear in Article 12. The primary

principle underlying these rules is the requirement that **management must minimize dislocation and inconvenience** to employees by doing everything in its power to protect full-time carriers.

Article 12 sets forth a series of actions that management is required to perform in order to fulfill the mandate of the primary principle as stated above. These actions include:

■ **separating casual and transitional employees** before excessing

career employees;

■ **minimizing PTF hours;**

■ giving **advance notice** of any excessing;

■ following a **specific sequence of steps** whenever excessing career employees; and

■ providing **retreat rights** for excessed carriers so they can return to their original positions whenever possible.

This article will also explain the most common management viola-

tions of the contract provisions regarding excessing by outlining what such grievances look like. Included is an explanation of the "look back" provisions of Article 12 which provide the right to obtain comparative work hour reports.

Preliminary notes

Several points should be noted at the beginning of any discussion of excessing. First, nearly all excessing involves more than one NALC

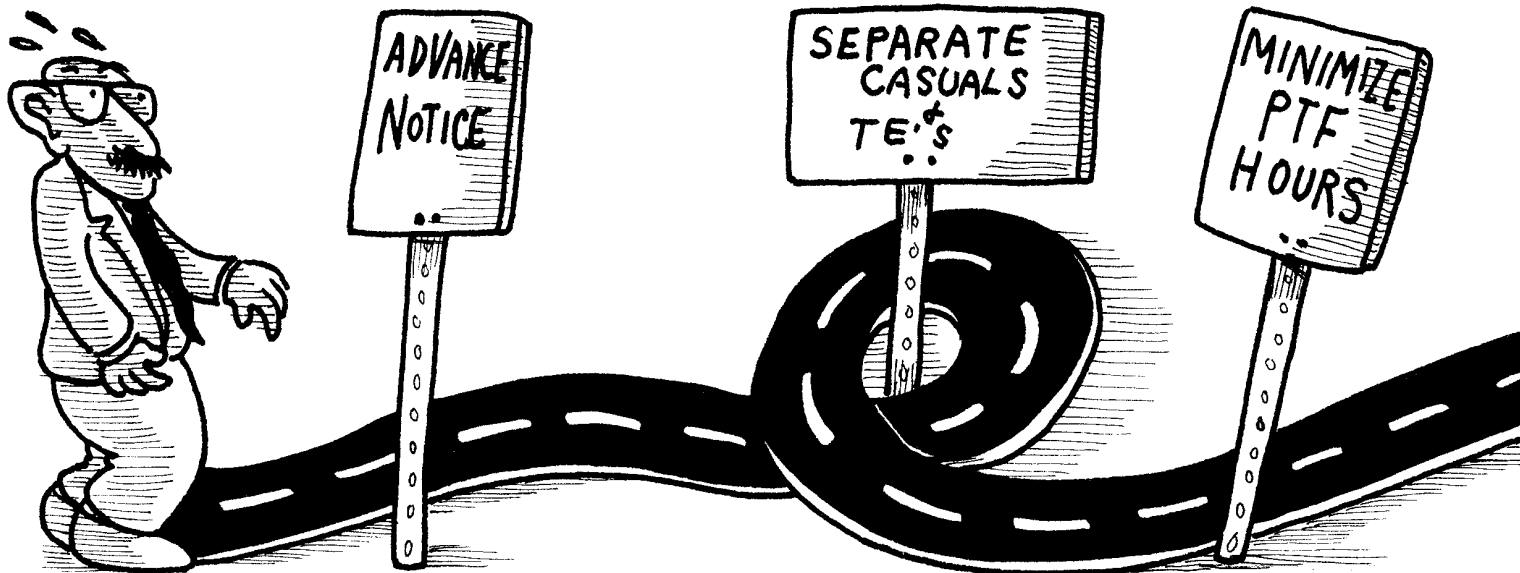
can determine if any contract violations occur. The story on page 13, "The case of the disappearing jobs," explains a recent regional arbitration decision concerning excessing in this situation.

A second point is that **management can follow all the rules and still be wrong.** It is not sufficient that Postal Service management can demonstrate that it followed each of the relevant excessing provisions to the letter. If the union can show after the fact through the comparative

This primary principle is repeated in several other sections of Article 12. Each time it appears, however, its meaning is clear. Moreover, management must follow **all the steps** as described in Article 12 to ensure minimal disruption to career employees.

Separating casuals and TEs

Logically, the first requirement that management must fulfill before



branch. In these situations, NALC National Business Agents and their representatives will help monitor the situation and give advice if it is necessary to file grievances in the face of excessing and withholding violations.

Branch leaders and stewards, however, should be aware of the basic principles that apply to all excessing situations.

Branch leaders have primary responsibility for one specific excessing situation, which is when carriers are excessed from one section within an installation to another section in the same installation. Because the excessing is occurring within one branch, only leaders of that branch

work hour report that excessing was actually unnecessary, management has violated the contract.

Primary principle

General rules concerning excessing appear in Article 12, Sections 4, 5.A. and 5.B. Article 12, Section 4.A. states:

"A primary principle in effecting reassignments will be that **dislocation and inconvenience to employees in the regular work force shall be kept at a minimum**, consistent with the needs of the Service. Reassignments will be made in accordance with this Section and the provisions of Section 5 below." [emphasis added]

excessing any career employees is to minimize the need for such excessing by **separating casual and transitional employees.**

The requirement to separate casuals appears in Article 12, Section 4.D and also in Article 12, Section 5.C.5(a). Section 4.D. states:

"In order to minimize the impact on employees in the regular work force, the Employer agrees to separate, to the extent possible, casual employees working in the affected craft and installation prior to excessing any regular employee in that craft out of the installation."

This language mandates that whenever management proposes to excess letter carriers out of an installation, or

excess employees from another craft and installation into the letter carrier craft, all casual employees in the installation from which the employees are to be excessed must first be separated. This requirement extends to **all casuals**, regardless of the craft in which they are working.

Postal Service management may argue that the inclusion of the phrase, "to the extent possible," gives management the option of maintaining some casuals if management believes that using casuals is the most efficient

the requirement to separate TEs appears in the revised Chapter 6 of *Building Our Future By Working Together*, a joint NALC-USPS document containing six joint Memoranda of Understanding on workforce changes in anticipation of automation. The relevant language in Chapter 6 states,

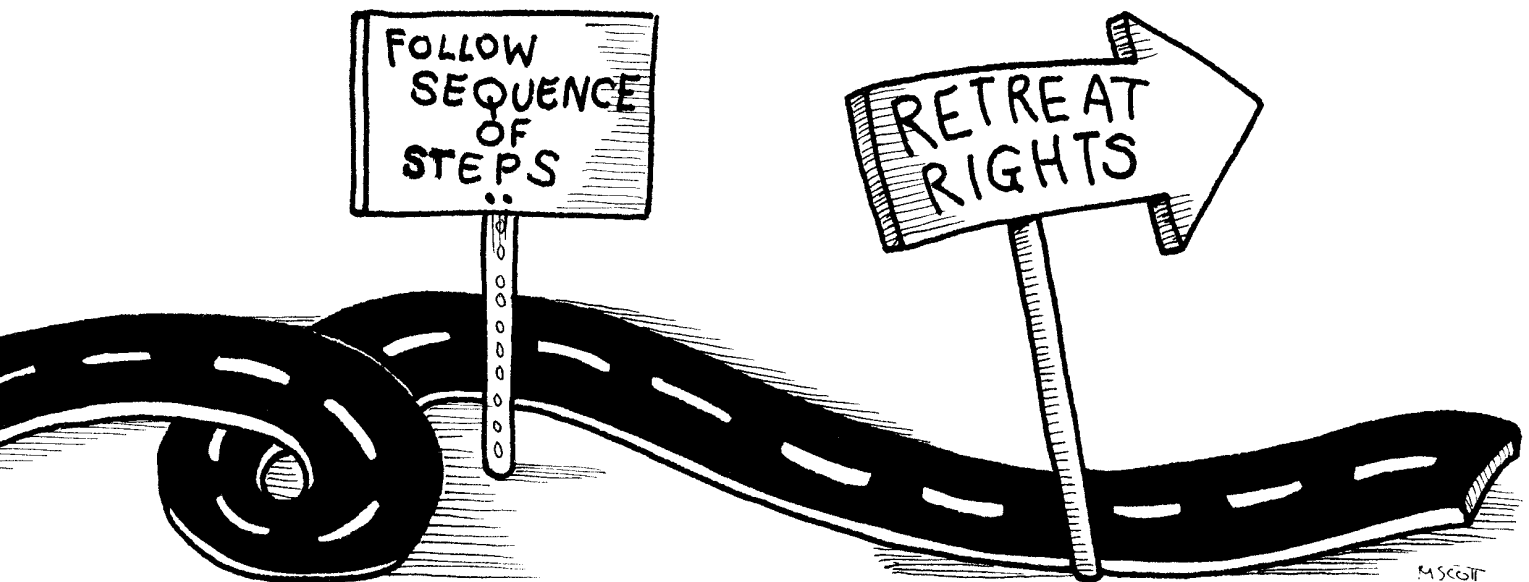
"The TE award was never intended to permit the Postal Service to employ TEs to displace career employees who are working full-time assignments. This language reaffirms

mandating this step appears in Article 12, Section 5.C.5., as follows:

"When for any reason an installation must reduce the number of employees more rapidly than is possible by normal attrition, that installation:

...Shall, to the extent possible, minimize the impact on full-time positions by reducing part-time flexible hours."

The NALC holds the position that this provision is violated whenever the remaining PTF hours are suffi-



way to move the mail. However, the NALC has always maintained that management's claims of efficiency should not override the primary principle of excessing, to minimize disruption for career employees. It is the union's position that it is **always** "possible" to separate casuals.

Postal Service management is also required to separate all transitional employees before excessing any career employee. (The only exception to this requirement is where "management can demonstrate that the work cannot be performed on a full-time basis in compliance with the requirements of the National Agreement.") Language supporting

that excessing may be initiated only when a full-time position can no longer be maintained due to legitimate operational changes. Only where that is demonstrated may management excess a letter carrier and then use a TE to perform part of the excessed carrier's work. Disputes over this matter will be given a high priority in regional arbitration scheduling; only removal cases will have a higher priority."

Minimize PTF hours

Another mandate that management must fulfill before excessing any career employees is to **minimize part-time flexible hours**. Language

efficient to create a full-time position. NALC representatives can use the comparative work hour report to determine any violation of this provision. The comparative work hour report is discussed in the section of this article titled, "About grievances," which begins on page 11.

Advance notice

After performing the above actions, the Postal Service may well determine that it must go ahead and eliminate career letter carrier positions at an installation--and therefore must excess career carriers. Before undertaking any such excessing, however, Postal Service management is

under obligation to **provide advance notice to the union.**

There are contractual provisions stating the amount of notice required to be given in certain situations. This language can be confusing because the situations have never been adequately defined. Up to the present, very few cases concerning excessing have been brought to arbitration. Therefore, meaningful definitions of certain language in Article 12 have never been made. NBAs and their representatives must in most cases assess the situation and determine what an appropriate definition may be.

For example, Article 12, Section 4.B. states that when a “major relocation” of employees is planned, the Postal Service must meet with the union at the national level at least 90 days before implementing any excessing plan. Exactly what constitutes a “major relocation” has yet to be definitively stated. If any branch is going to experience any effects of such a “major relocation,” NALC’s National Business Agents will monitor such excessing and inform and advise the branch leaders involved.

In cases that do not involve “major relocations,” language in Article 12, Section 5.B.4 states:

“Unions affected shall be notified in advance (as much as six months whenever possible), such notification to be at the regional level, except under A.4. above, which shall be at the local level.”

Although these “other cases” are also undefined, it is the union’s position that NALC is affected whenever a letter carrier is excessed or whenever an employee from another craft is excessed into the letter carrier craft. Furthermore, the NALC holds that that the exception to the six-month requirement applies only when it would not have been “possible” — for example, in situations where the

need for excessing could not have been reasonably foreseen. Therefore, the Postal Service should give NBAs a full six-months notice in **any** situation in which excessing is proposed.

The exception to giving NBAs six months’ notice applies when the proposed excessing will be from a section within an installation, that is, in accordance with Article 12, Section 5.A.4, which states the specific situa-

Postal Service management must provide advance notice to the union.

tion in which management finds it necessary to “reassign within an installation employees excess to the needs of a section of that installation.” When excessing is proposed within an installation, the local NALC leaders must be given six months’ advance notice.

This situation is described in the story beginning on page 13, “The case of the disappearing jobs.” As noted in that story, when excessing employees from one section of an installation to another section of the same installation, Article 12 only comes into play if the local agreement defines sections within the installation, as authorized by Article 30, Section B, Item 8. In such situations, as the story illustrates, management must notify the local union six months in advance. In all other cases

of excessing, the required advance notice must be made to the national business agent, who will notify branch leaders.

Sequence of steps

Finally, when the time comes that career employees must actually be excessed, postal management must follow a specific sequence of steps. These steps, which appear in Article 12, Section 5.C, are as follows:

- If the local agreement defines sections, as authorized by Article 30, Section B.8, management must first excess employees to another section in the **same craft and installation** under the provisions of Article 12, Section 5.C.4.b.

- If satisfying the first requirement is not possible, then management must excess employees to **another craft in the same installation** under the provisions of Article 12, Section 5.C.5.a(4).

- If neither of the first two options are feasible, then under the provisions of Article 12, Section 5.C.b(1), management must try to excess employees to the **same craft in another installation** within 100 miles of the losing installation.

- Finally, if none of the first three options are possible, management may then seek to excess employees to **another craft in another installation** within 100 miles of the losing installation under the provisions of Article 12, Section 5.C.5.b(2).

Retreat rights

Article 12 of the National Agreement also provides retreat rights for excessed career employees. These rights basically give excessed employees the right to be reassigned with full seniority to available vacancies occurring in the installation, level or craft from which they were reas-

signed. Employees lose their retreat rights if they fail to apply for the first available vacancy. However, if management fails to inform an employee with retreat rights of an available vacancy, the retreat rights are not extinguished.

About grievances

Clearly, excessing situations can be complicated. There are a number of rules that management must follow, and in the end management must be able to prove that the excessing was required.

In many cases, NALC representatives may have little trouble identifying certain management violations of the provisions concerning excessing, such as failure to provide advance notice and failure to separate casuals and TEs. NALC representatives can also track management's excessing decisions to determine whether management has violated the requirement that a specific sequence of steps be following in excessing that are designed to minimize dislocation and inconvenience for excessed employees. Details about these kinds of violations appear in the accompanying story on page 13 explaining a recent regional arbitration decision on excessing violations.

To determine the most basic violation of excessing—that is, excessing career employees that it can later be determined should not have been excessed—NALC representatives should request a comparative work hour report. The right to this report is stated in Article 12, Section 4.C. as follows:

“When employees are excessed out of their installation, the Union at the national level may request a comparative work hour report of the losing installation 60 days after the excessing of such employees.”

Because the contract states that

comparative work hour reports must be requested at the national level, any NALC representative wishing such a report must ask the office of the NALC Vice President to obtain the report. When requesting these reports, NALC representatives should ask for the the following information:

- Total work hours—for the 30 days prior to excessing and the 30 days after excessing has occurred.
- Straight-time hours—used by all letter carriers, broken down by full-time regulars, full-time flexibles, part-time regulars, part-time flexibles, transitional employees and casuals.
- Overtime hours—for all categories of employee as listed above.
- The carrier complement—30 days prior to excessing and 30 days after the excessing occurred.

NALC representatives should provide the following information when making the request to NALC Headquarters:

- The losing installation.
- The gaining installation.
- The date excessing occurred.
- The number of employees excessed.
- The craft to which employees were excessed.
- The number of carriers who elected to become PTFs and remain at the installation.

The information contained in a comparative work hour report can be used to strengthen the union's position in an existing excessing grievance, or it may be an independent factual basis for the initial filing of an excessing grievance or a grievance concerning retreat rights, as provided for in Article 12, Section 4.C.

Situations where a comparative work hour report is used to reinforce the union's position in an existing grievance are an exception to the general principle that new facts may

not be introduced in arbitration.

There are two reasons for this exception. First, the contract itself requires the union to wait 60 days before asking for such a report and thus the report may not have been available when the grievance was first filed. Second, the Postal Service is permitted a reasonable amount of time to prepare the report, so the union should not be penalized for any delays in this preparation.

Grievances about withholding

Article 12, Section 5.B.2 requires management to withhold full- and part-time vacancies in anticipation of excessing employees to those vacancies. However, the NALC is more concerned with those situations in which management seeks to withhold career positions for an excessive amount of time, or seeks to withhold an excessive number of career positions. When positions are withheld in such a manner, PTF letter carriers suffer because they are not being promoted into regular jobs.

There is no blanket rule covering such circumstances. Rather, each situation must be examined separately. Generally, this examination includes calculating the number of positions that will be reduced, the length of time over which the reductions will occur and then determining whether the reductions could be accommodated by normal attrition.

Withholding of positions in anticipation of excessing often occurs when management is trying to prepare for what it believes will be the impact of DPS mail. The “Hempstead Formula” described in *Building Our Future By Working Together* is the only mutually agreed-upon methodology for projecting such impact on let-

ter carrier hours. If management uses any other method, the results must be critically examined to ensure that the estimated impact has not been overstated.

A major component of any calculation of positions needing to be withheld includes a calculation of the rate of normal attrition. This rate can vary from installation to installation depending on the age composition of carriers. Management must look at the specifics of each situation and cannot rely on application of some "national formula" for calculating normal attrition.

There is no established contractual time limit on withholding positions. However, Arbitrator Gamser wrote in a national-level arbitration case (C-5904) that the parties must apply "a rule of reason based upon the facts and circumstances then existing."

Management must look at the specifics of each situation.

Whether management has been reasonable in a particular case depends on the full facts and circumstances. In case C-5904, Arbitrator Gamser held that the Postal Service had not violated the National Agreement by withholding letter carrier positions for approximately one year.

Yet another aspect of withholding in anticipation of excessing is the requirement that once management

has decided to withhold positions, it cannot add to the existing problem by promoting part-time flexibles to full-time status. The need to avoid this situation was the fundamental justification for transitional employees.

NALC is particularly concerned about cases where management withholds letter carrier positions for the future excessing of full-time clerks, but then continues to promote part-time flexible clerks to regular status.

Other requirements placed upon management regarding withholding include the following:

- Management may not withhold T-6 letter carrier positions in anticipation of the excessing of Grade 6 employees from another craft. Article 12, Sections 5.B.9, 5.C.5.a(4) and 5.C.5.b(2) require that when employees are excessed into another craft, they must meet the minimum qualifications for the position. The minimum qualification standards for T-6 positions include one year of experience as a city carrier. Since clerks cannot meet that minimum requirement for T-6 positions, management has no authority to withhold positions in such cases. The only exception to this rule would be where management can demonstrate that a specific clerk who had been a letter carrier will be excessed back into the carrier craft.

- Management may not withhold letter carrier positions in anticipation of excessing employees from Grade 4 or lower positions. The provisions of Article 12, Sections 5.C.5.a(4) and 5.C.5.b(2) specifically require that when employees are excessed to other crafts, they must be placed in positions at the **same or lower level**. This problem is especially likely to arise in situations where management withholds positions in anticipation of excessing employees from the mail-handler craft.

Final analysis

NALC branch leaders and stewards should aim for a general understanding of the issues involved in excessing and withholding. As indicated earlier, if carriers are being excessed between installations, more than one NALC branch will be affected and the appropriate National Business Agent and his representatives will have information on what's happening. However, NALC local leaders should maintain a watchful eye on any excessing occurring within their branches. As a review of the above

Branch leaders must stay aware of what is happening.

story indicates, there are many opportunities for management contract violations.

Finally, in the specific situation in which carriers from one section of an installation are being excessed to another section in the same installation, the responsibility for overseeing such a procedure rests squarely with the branch officers representing carriers at that installation. Branch leaders must stay aware of what is happening. Finally, branch leaders should remember that determining whether excessing procedures have been correctly followed is only one part of any valid analysis of management's actions. The Postal Service should also be able to prove that excessing was necessary in the first place. ■

The case of the disappearing jobs

A recent regional arbitration award (C-16916) clearly demonstrates common management violations of Article 12. The sections of Article 12 that are relevant to this case also are cited and explained in the accompanying story, "Excessing and carriers' rights," which begins on page 1.

This case concerns excessing from one section within a postal installation to another section of the same installation. Language covering excessing in such situations is found in Article 12, Section 5.C.4. (See "Know your contract," on page 5.)

Note that the events in this case were legitimately the basis for grievances and arbitration because the branch's local memorandum of understanding had identified separate sections within the installation for excessing purposes as authorized by Article 30, Section B.18. If a Local Memorandum of Understanding *does not identify separate sections* for excessing purposes, then Article 12, Section 5.C.4(a) applies and the entire installation is considered a section. In such cases, the excessing provisions of Article 12 do not come into play unless letter carriers are excessed out of the craft, letter carriers are excessed out of the installation or employees from other crafts or installations are excessed into the letter carrier craft. (Explanations of relevant sections of Article 12 applying in such cases appears in the accompanying story, "Excessing and carriers' rights.")

If a Local Memorandum of Understanding *does identify separate sections* for excessing purposes, then the special rules in Article 12, Sections 5.C.4(b) and (c) will apply



whenever management proposes to reassign letter carriers who are excess to the needs of one of the defined sections within an installation to another section within the same installation.

This case offers a close look at a typical excessing grievance and explains the contractual basis for the arbitrator's decision, which found management in clear violation of several provisions of Article 12. Specifically, management in this case failed to minimize disruption for the carriers affected by failing to provide adequate notice and refusing to separate casuals and transitional employees before excessing regular carriers.

The facts

On August 30, 1996 three letter carriers at a section at a large installation received notice that they were being excessed from their section to another section at the installation. The letter from Postal Service management stated that the carriers would become unassigned regulars in the new section effective September 7, 1996. They would then be assigned to any vacant bid assignment unless they successfully bid on a posted

vacancy before that time. The letter also spelled out the carriers' "retreat rights," their right to return to their original section as soon as a vacancy in their salary level became available.

By October 26, the three carriers had successfully bid on and moved to assignments at different sections. The NALC grieved the excessing letter as violating Article 12; the grievance proceeded to arbitration.

Union position

The NALC's case rested on the fact that management had violated a number of mandates concerning excessing that are contained in Article 12. First, the union argued, management failed to uphold the primary principle to be followed in excessing career employees. This primary principle is contained in Article 12, Section 5.B.1, which states that:

Dislocation and inconvenience to full-time and part-time flexible employees shall be kept to the minimum consistent with the needs of the service.

As discussed in "Excessing and carriers' rights," beginning on page 1, one of the first steps that the Postal Service should take in fulfilling this primary principle is to separate casual and transitional employees. At the time the regular carriers were excessed, the section employed nine TEs and two casuals, who worked a total of 36 hours at the station. By excessing the three regular employees, management abolished three routes or 24 hours of work. Management claimed that changes due to DPS and "the needs of the Service" forced elimination of the routes and excessing of the regular

carriers. However, there was enough work—36 hours worth—at the section to permit management to keep the regular employees by separating the TEs and casuals. By failing to separate these employees, and instead excessing three regular carriers, management clearly violated the provisions concerning proper excessing.

Finally, the union advocate argued that Article 12.5.B.4 of the National

Agreement requires management to give the Union advance notice of its intentions to excess letter carriers.

This provision states:

Unions affected shall be notified in advance (as much as six (6) months whenever possible), such notification to be at the regional level, except under A.4 above [i.e. excessing to another section within an installation].

In this case, the excessing in dispute was to the same craft in another section within the installation and the local agreement defined sections for excessing purposes. Thus management was required but failed to notify the Union at the local level. Rather than notifying the union, management simply sent notifications to the grievants. As a result, the union first learned about management's intention to excess the grievants after the grievants received their notifications.

Know your contract: Excessing within an installation

As noted in the accompanying story, excessing can occur not only between installations but also between sections within an installation. The following contract language applies in such situations. Note that these rules are relevant only if the branch has a Local Memorandum of Understanding that has identified sections within an installation for the purposes of excessing.

More information about retreat rights can be found in the feature, "Contract Talk," printed in the May 1997 issue of *The Postal Record*.

"Article 12, Section 5.C.4.

Reassignment Within an Installation of Employees Excess to the Needs of a Section

"a. The identification of assignments comprising for this purpose a section shall be determined locally by local negotiations. If no sections are established immediately by local negotiations, the entire installation shall comprise the section.

"b. Full-time employees, excess to the needs of a section, starting with that employee who is junior in the same craft or occupational group and in the same level assigned in that section, shall be reassigned outside the

section but within the same craft or occupational group. They shall retain their seniority and may bid on any existing vacancies for which they are eligible to bid. If they do not bid, they may be assigned in any vacant duty assignment for which there was no senior bidder in the same craft and installation. Their preference is to be considered if more than one such assignment is available.

"c. Such reassigned full-time employee retains the right to retreat to the section from which withdrawn only upon the occurrence of the first residual vacancy in the salary level after employees in the section have completed bidding. Such bidding in the section is limited to employees in the same salary level as the vacancy. Failure to bid for the first available vacancy will end such retreat right. The right to retreat to the section is optional with the employee who has retreat rights with respect to a vacancy in a lower salary level. Failure to exercise the option does not terminate the retreat rights in the salary level in which the employee was reassigned away from the section....

"d. The duty assignment vacated by the reassignment of the junior full-time employee from the section."

USPS position

Management countered the union's argument that it had failed to provide adequate notice by stating that the grievants had subsequently voluntarily bid on jobs outside the section. Therefore they were not technically excessed and the question of notice becomes irrelevant.

Further, the management advocate stated that the Postal Service has the right to make necessary operational

By failing to separate casuals and TEs, management clearly violated the contract.

changes, which in this case were required because of changes in DPS mail.

In answering the union's position that management should first have separated all casuals and TEs, the Postal Service advocate argued that schedules at the section could not be

arranged so that the regular carriers would be guaranteed eight hours of work as required by the contract. TEs could be used because they only required four hours of work daily. Management claimed it needed the flexibility provided by using TEs.

Finally, management raised the question of burden of proof. Because this is a contract case, the union must show that management violated the *National Agreement*. The union, argued the Postal Service advocate, is trying to shift the burden of proof back to management by demanding that management show that the regulars could not have performed the work of the TEs and casuals. Such proof is not required in this case, the management advocate stated.

The arbitrator rules

In making his decision, the arbitrator wholeheartedly supported NALC's position by finding that USPS had indeed violated Article 12 in the precise ways that the union stated.

First, the arbitrator pointed out the flaw in management's claim that advance notice was not required because the carriers voluntarily transferred and thus were not technically excessed. The letter received by the grievants stated it was a notice regarding "excessing." In the letter the grievants were informed that if they didn't voluntarily bid out of the section, they would be involuntarily assigned to positions at other sections. Finally, the letter stated the grievants' retreat rights—rights they would not have had if in fact they had not been excessed.

Therefore, proper advance notice was required and was not given, in violation of Article 12. In fact, management *never* formally notified the union. NALC local leaders learned of the excessing from the grievants, who called the branch president after receiving the excessing letter. The

arbitrator also agreed with the union that Postal Service management had made no effort to separate casuals and TEs, which would have reduced the need to excess career employees. In discussing this issue, the arbitrator addressed also management's claim that the union failed to meet its burden of proof. It is true that in contract cases the union bears that burden, the arbitrator stated. However, in cases such as this, in which management claims that "valid operating reasons" motivated its action, the arbitrator said that **management must prove**

Management must prove that its 'operating reasons' are valid.

that those reasons are valid.

Management cannot simply cite the management rights clause (Article 3) in support of its actions, the arbitrator further explained. Rather, the Postal Service has to show that its decision—to excess three regular carriers—was the *only feasible response* to the situation.

Clearly, in this case, the arbitrator stated, management made no attempt to determine if the regular carriers could be retained at the section if the casuals and TEs were separated. There was no evidence that the three regular carriers could not have performed all or part of the 36 hours of work currently assigned to the nine TEs and two casuals. "Rather," the arbitrator stated, "management used TEs to the detriment of career carriers."

Monetary remedy

In devising an appropriate remedy, the arbitrator noted that following the events described in the case, all three carriers had been offered the opportunity to exercise their retreat rights and return to their original section. Only one carrier had chosen to do so; the others preferred to remain at their new sections. The carrier returning to her original section testified that by being forced to transfer, she had to drive an additional 45 minutes to work and incurred problems with her child care. The arbitrator ruled that to compensate this carrier for her hardship, management should pay her \$500. The other carriers, who had not encountered as much hardship, should be paid \$250 each.

Note to stewards

This case presents clear examples of the kinds of management violations that occur in connection with excessing. Failure to provide adequate notice, failure to minimize disruption and refusal to separate casuals and TEs before excessing regular carriers are problems that may emerge whenever management excesses career letter carriers. Stewards should also note that in this case, the arbitrator ruled that a monetary remedy was appropriate.

However, stewards should also be aware that as indicated in the story, "Excessing and carriers' rights," beginning on page 1, grievances concerning excessing between installations may require the involvement of the National Business Agent's office. Stewards can be invaluable in such cases, however, by providing the best, most accurate information about the effects of excessing within installations—thus being the eyes and ears of the union on the workroom floor. ■

Regional Training Seminars

Listed below are regional training and educational seminars scheduled to begin before February 1, 1998.

For more information, contact your national business agent.

Atlanta Region (Florida, Georgia, North Carolina and South Carolina)

November 1-2, South Carolina State Association Training Seminar, Holiday Inn, Walterboro, SC.

National Business Agent Matthew Rose, (305) 964-2116.

Boston Region (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont)

November 23-24, New England Regional Seminar, Westin Hotel, Providence, RI.

National Business Agent Paul Daniels, (203) 235-7553.

KIM Region (Indiana, Kentucky and Michigan)

October 12-13, KIM Region October Seminar, Executive West Hotel, Louisville, KY.

National Business Agent Ron Brown, (810) 589-1779.

Minneapolis Region (Minnesota, North Dakota, South Dakota and Wisconsin)

October 24-26, North Dakota State Training Seminar, Bismarck, ND.

November 1-2, Wisconsin State Fall Training Seminar, Oshkosh, WI.

National Business Agent Barry Weiner, (612) 378-3035.

Pacific Northwest Region (Alaska, Idaho, Montana, Oregon, Utah and Washington)

January 9-10, Pacific Northwest Region Training Seminar, Oregon State Mid-Winter Assembly.

National Business Agent Jim Williams, (360) 892-6545.

St. Louis Region (Iowa, Kansas, Missouri and Nebraska)

October 5-7, Iowa State Fall Training Seminar, Holiday Inn, Amana, IA.

October 20, Regional Compensation Training Seminar, Kansas City, MO.

National Business Agent Joe Miller, (314) 872-0227.

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