Office time—Management's arbitrary and often unrealistic expectations

Throughout the years, Postal Service management has attempted many times to devise a system or a "tool" that projects a letter carrier's daily workload. Believers in these systems or tools think they can take a mathematical formula and simply plug in some mail volume numbers, arbitrarily select a street time for the day, and apply some non-existent work standards to determine what time a carrier will leave the office and what time they will return from the street. Their goal is to determine how much "down time" the carrier has in order to pivot off another route.

In addition to using such time-projection systems, managers occasionally just pick arbitrary time allotments out of the air and attempt to apply such numbers to a letter carrier's office and street time, and then expect them to meet those times. **One recent application arbitrarily limits letter carriers to no more than one hour of office time in the morning. No matter how much mail they have to case or how much other office work they must perform, they are instructed to be on the street no later than one hour after they begin their tour.** Another arbitrary time allotment by managers limits letter carriers to a predetermined amount of time in the evening, usually five minutes, to perform their required p.m. office duties.

Whether management is using a time-projection tool or simply applying arbitrary time allotments for letter carriers to adhere to, such ways to determine office times often do not allow for fixed office time to perform such necessary daily functions as vehicle inspections, stand-up talks, retrieving mail from the throwback case, withdrawing mail, and retrieving or signing for accountable items, to name a few morning office duties. If your office has an office break, that time is most likely not factored into these projections or allotted times either. Arbitrary projections and time allotments certainly do not take into consideration how much actual work needs to be performed and the actual time allowed for each of these office functions.

Letter carriers are required to perform certain tasks in the morning, before leaving for the route, and in the afternoon, upon returning to the office. Management's projections or arbitrary time allotments are not the sole determinant of a carrier's leaving or return time, or daily workload. **Using a time projection or applying an arbitrary amount of time does not change the letter carrier's reporting requirements** outlined in Section 131.4 of *Handbook M-41, City Delivery Carriers Duties and Responsibilities*; the supervisor's scheduling responsibilities outlined in Section 122 of *Handbook M-39, Management of Delivery Services*; or the letter carrier's and supervisor's responsibilities contained in Section 28 of *Handbook M-41*.

The letter carrier's reporting requirements outlined in Section 131.4 of *Handbook M-41* read, in relevant part, as follows:

> 131.4 Reporting Requirements
>
> 131.41 It is your responsibility to verbally inform management when you are of the opinion that you will be unable to case all mail distributed to the route, perform other required duties, and leave on schedule or when you will be unable to complete delivery of all mail.
>
> 131.42 Inform management of this well in advance of the scheduled leaving time and not later than immediately following the final receipt of mail. Management will instruct you what to do.
>
> 131.43 Complete applicable items on Form 3996, Carrier-Auxiliary Control, if overtime or auxiliary assistance is authorized in the office or on the street.
>
> 131.44 Report on Form 1571 all mail undelivered—including all mail distributed to the route but not cased and taken out for delivery. Estimate the number of pieces of mail.
>
> 131.45 Do not curtail or eliminate any scheduled delivery or collection trip unless authorized by a manager, in which case you must record all facts on Form 1571.
>
> 131.46 Before you leave the office, enter on Form 1571 the mail curtailed; when you return, add any mail which was not delivered, and which was returned to the office. Follow any special local procedures set up to identify errors and corrective actions for mail returned because it was out of sequence.

Section 28 of *Handbook M-41* outlines the procedures for letter carriers to fill out PS Form 3996, Carrier—Auxiliary Control, and to submit it to the supervisor when the letter carrier estimates that the daily workload cannot be completed in the allotted time. It also details the requirements of the supervisor in Item L of the form. A complete explanation of Section 28, PS Form 3996 and related USPS supervisor responsibilities can be found in the *Letter Carrier Resource Guide* available at nalc.org/resourceguide.

Section 122.33 of *Handbook M-39* requires a supervisor to provide a letter carrier with PS Form 3996 upon request once the supervisor has been verbally informed why the request is being made. That section states:

> 122.33 The employee, upon request, will be provided a Form 3996, Carrier - Auxiliary Control, after the supervisor has been

verbally informed as to the reason for the request. The employee shall not be denied the form and, upon request, a duplicate of the completed form will be provided the employee.

Article 41, Section 3G of the National Agreement reinforces the carrier's rights and management's responsibilities related to the PS From 3996. It states:

G. The Employer will advise a carrier who has properly submitted a Carrier Auxiliary Control Form 3996 of the disposition of the request promptly after review of the circumstances at the time. Upon request, a duplicate copy of the completed Form 3996 and Form 1571, Report of Undelivered Mail, etc., will be provided the carrier.

Letter carriers are responsible for estimating the amount of time it will take to complete their assigned duties, and management has a responsibility to manage that workload within the confines of the handbook language. In attempting to meet bogus time projections or arbitrary time allotments, some required office duties are, at times, ignored or overlooked.

Vehicle inspections

Vehicle inspections are often overlooked office duties. Letter carriers should be afforded time to properly inspect their delivery vehicle according to USPS Notice 76, Expanded Vehicle Safety Check, every day before operating the vehicle. Vehicle inspections should be performed as soon as possible after clocking in to allow letter carriers to promptly report vehicle deficiencies to management. These requirements are found in Sections 832 and 842 of *Handbook M-41,* which state:

832.1 Inspect vehicle as described on Notice 76, Expanded Vehicle Safety Check (see exhibit 832.1) for deficiencies, body damage, or inoperable items. See section 842 for reporting defects.

842.1 Reporting Defects

Driver must (a) report all mechanical defects or failures and major body damage on Form 4565, Vehicle Repair Tag (see exhibit 842.1) as soon as noted, and (b) immediately turn in the completed form to a dispatcher or manager. Minor body damage can sometimes await repair until the next regular inspection and need not be reported more than once.

Section 922.51.f of *Handbook M-41* indicates how the time for vehicle inspections is credited on the PS Form 1838-C, Carrier's Count of Mail – Letter Carrier Routes Worksheet, during the route inspection process. The minimum time allowance for performing vehicle inspections is three minutes; however, a proper vehicle inspection may take longer.

As indicated in Section 922.51, this inspection should be performed as part of morning office duties and should receive office time credit accordingly. Notice 76 specifies that letter carriers should perform Items 16 and 17 on the list with assistance from another person if possible. Vehicle inspections are an important part of maintaining letter carrier safety and should not be overlooked.

Hold mail

Letter carriers also should be afforded the proper amount of office time to process hold mail. Mail may be held for many reasons, including customers being temporarily away or on a 10-day hold in anticipation of processing a change of address. The procedures for processing hold mail vary based on the type of mail and the reasons for the hold. These procedures are explained in depth in Chapter 2 of *Handbook M-41*. Whatever the reason mail is being held, letter carriers should process this mail on office time.

Handbook provisions instruct management to have letter carriers retain hold mail at the carrier case. This language is found in Section 117 of *Handbook M-39*:

117.1 Workroom Floor Layout

k. Hold Mail. Instruct the carrier to place hold mail in a central location only when space is not available at the carrier's case.

Letter carriers also must retrieve accountable items and special services mail on office time. Accountable items are keys, postage due, customs duty and special services mail. Letter carriers receive these items in the morning from the accountable clerk. These items are handled in accordance with Section 261 of *Handbook M-41:*

261.11 Accountable items are keys, postage due, customs duty, and special services mail.

261.12 Generally, carriers are required to call at the finance cage for accountable items. They may be called in groups by call of route numbers or by passing a paddle (see "Paddle System" in the Glossary). At some offices, the items are delivered to the carrier at his/her case.

This handbook language makes clear that the processing of these items should be credited to office time. Letter carriers should ensure that they are on office time when handling accountable items, whether in the morning before leaving for the route or in the afternoon upon returning.

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Office time (continued)

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Rest breaks

City letter carriers are entitled to two paid 10-minute rest breaks during each eight-hour workday. One of these rest breaks may be taken in the office on office time if your local branch has chosen this option. The negotiated two 10-minute break periods are the required minimum. Longer breaks may be established by past practice or by the local memorandum of understanding (LMOU). Letter carriers are required to take the negotiated breaks. The *Joint Contract Administration Manual (JCAM)* on page 41-28 explains this requirement as follows:

> National Arbitrator Britton ruled that the Postal Service must ensure that all employees stop working during an office break. Contractual breaks must be observed and cannot be waived by employees (H4N-3D-C 9419, Dec. 22, 1988, C-08555).

If your branch has chosen an office break, letter carriers must take this break on office time. During the route inspection process, letter carriers receive credit for this office break on the PS Form 1838-C, and it is included in the office time evaluation for each route. Letter carriers should never skip their negotiated rest breaks whether they are taken in the office or on the street.

P.M. office duties

In some locations, supervisors instruct letter carriers to complete their assigned p.m. office duties within a predetermined amount of time. Oftentimes, afternoon office duties can be unclear for city letter carriers. Section 4 of *Handbook M-41* specifies what duties letter carriers should perform as p.m. office functions after clocking back in from the street. The supervisor's responsibilities can be found in *Handbook M-39*. Those duties include the following:

> 127 Office Work When Carriers Return From Route
>
> The carrier unit managers must observe and direct carrier activity when carriers return from the route. Observe such things as:
>
> a. See that carriers promptly clock in on return to office.
>
> c. See that clerks are available to check in accountable items as efficiently and promptly as possible.

As indicated, handbook provisions state carriers should clock back into the office immediately after unloading their vehicle and before disposition of collected mail. This is indicated in Section 42 of *Handbook M-41*:

> 42 Disposition of Collected Mail
>
> Place the mail collected on designated table or in receptacles.

Sorting of outgoing collection mail and all other end-of-day activities should be conducted on office time. Letter carriers also should return accountable items to the clearing clerk for proper clearance while on office time, as indicated in Section 43 of *Handbook M-41* and Section 127.c of *Handbook M-39* cited above. See the following sections of *Handbook M-41* for detailed explanations of the p.m. office duties pertaining to accountable items:

> 43 Clearance for Accountable Items
> 431 Keys
> 432 Registered and Certified
> 433 Insured Mail
> 434 CODs
> 435 Customs Duty Mail
> 436 Postage Due

Processing of undelivered mail also should be performed on office time, whether this mail is processed in the morning or in the afternoon upon return from the route. Section 44 of *Handbook M-41* explains this requirement:

> 44 Undelivered Mail
>
> 441 Processing Undelivered Mail
>
> Follow procedures listed in part 24 to process forwardable and undeliverable mail (1) that you didn't process before leaving the office and/or (2) that you picked up on route. After processing,
>
> place this mail in throwback case, as explained in part 24.
>
> 442 Completing PS Form 1571
>
> 442.1 After return from your trip, obtain PS Form 1571, Undelivered Mail Report, from unit manager.
>
> 442.2 Add any mail which was not delivered but was returned to the office.
>
> 442.3 Sign the form and give it to a unit manager.

There is no set time in which the above duties must be performed. These duties are equally as important as morning office or street duties. Letter carriers still are responsible for estimating the amount of time it will take to complete their assigned duties. Likewise, management still has a responsibility to manage that workload within the confines of the handbook language.

If letter carriers are not allowed to perform office duties, or if they are not afforded adequate time to perform these duties, a shop steward or branch officer should be notified so they can investigate and, if appropriate, file a grievance.

Article 25 Higher Level Assignments—vacant carrier technician positions

Temporarily vacant carrier technician (T-6) positions are not available for opting/hold-down under the provisions of Article 41. Carrier technician positions are considered higher-level assignments, and when temporary vacancies occur, they are filled in accordance with the provisions of Article 25. This month's "Contract Talk" will explain Article 25, higher-level assignments, and the rules for filling temporarily vacant carrier technician assignments.

Article 25, Section 1 of the National Agreement defines higher-level work.

> **Section 1. Definitions**
>
> Higher level work is defined as an assignment to a ranked higher-level position, whether or not such position has been authorized at the installation.

Article 25, Section 4 sets forth rules for filling temporarily vacant, bargaining-unit, higher-level positions, stating:

> **Section 4. Higher Level Details**
>
> Detailing of employees to higher-level bargaining unit work in each craft shall be from those eligible, qualified and available employees in each craft in the immediate work area in which the temporarily vacant higher-level position exists. However, for details of an anticipated duration of one week (five working days within seven calendar days) or longer to those higher-level craft positions enumerated in the craft Article of this Agreement as being permanently filled on the basis of promotion of the senior qualified employee, the senior, qualified, eligible and available employee in the immediate work area in which the temporarily vacant higher-level position exists shall be selected. These rules depend on the duration of the vacancy. For a vacancy of less than five working days, any employee may be selected from those who are eligible, qualified and available in the immediate work area in which the vacancy occurs. For a vacancy of five working days or more, the senior qualified, eligible and available employee in the immediate work area must be selected.

As indicated, these rules depend on the duration of the vacancy. For a vacancy of less than five working days, any employee may be selected from those who are senior, qualified, eligible and available in the immediate work area in which the vacancy occurs. For a vacancy of five working days or more, the senior, qualified, eligible and available volunteer in the immediate work area must be selected. Article 25 is especially beneficial to full-time regular employees who already have their own bid assignments. Since Article 41, Section 2.B restricts opting to part-time flexibles, reserve regulars, unassigned regulars and city carrier assistants (CCAs); full-time regular employees with bid assignments cannot opt for vacant routes. However, all qualified letter carriers, including part-time flexibles and full-time regular letter carriers with bid positions, are eligible to apply for higher-level assignments under the provisions of this section.

"Carrier technician positions are considered higher-level assignments, and when temporary vacancies occur, they are filled in accordance with the provisions of Article 25."

An employee selected for a higher-level assignment may voluntarily remain on the assignment as long as he or she remains eligible, qualified and available in the immediate work area. However, unlike the provisions of Article 41 regarding hold-downs, Article 25, Section 4 does not have a duration clause. Therefore, the assignment to higher level does not limit or supersede management's right to assign full-time unassigned regular employees under the provision of Article 41, Section 1.A.7, which could possibly remove the employee from the immediate work area of the available position. Likewise, the assignment to higher level does not limit or supersede a carrier's right to bid, opt or return to his or her bid position. Employees working a vacant carrier technician assignment under Article 25 may choose to return to their regular assignment any time they wish.

Letter carriers who temporarily fill vacant T-6 positions assume the hours of the vacancy as provided by the pre-arbitration settlement H8N-3P-C 32705, Jan. 28, 1982 (M-00431 in NALC's Materials Reference System), which states:

> Details of anticipated duration of one week (five working days within seven calendar days) or longer to temporarily vacant Carrier Technician (T-6) positions shall be filled per Article 25, 1981 National Agreement. When such temporary details involve a schedule change for the detailed employee, that employee will assume the hours of the va-

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Contract Talk
by the Contract Administration Unit

Article 25 (continued)

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cancy without obligation to the employer for out-of-schedule overtime.

Carriers filling temporarily vacant carrier technician assignments will receive additional compensation equivalent to 2.1 percent of the employee's applicable hourly rate for all paid hours while working the assignment. Pay for work while in a higher-level position is governed by Article 25, Section 2, which provides in relevant part:

> An employee who is detailed to higher-level work shall be paid at the higher level for time actually spent on such job. An employee's higher-level rate shall be determined as if promoted to the position.

Additionally, the Step 4 Settlement H4N-5R-C 44093, Feb. 10, 1989 (M-00902), provides that the following management document known as the "Brown Memo" (Nov. 5, 1973, M-00452) is a contractual commitment and remains in effect. The memorandum explains that when a replacement employee is entitled to higher-level pay when no employee is detailed under the provisions of Article 25, Section 4:

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

Management has an obligation to fill temporarily vacant carrier technician positions when requested via Article 25 by a qualified career letter carrier. National Arbitrator Snow held in C-10254, Sept. 10, 1990, that management may not assign different employees on an "as needed" basis to carry a route on a T-6 string when a vacancy of five or more days is involved; instead, such vacancies must be filled according to Article 25. While CCAs are not eligible for higher-level pay under Article 25, CCAs can be administratively assigned by management to vacant carrier technician assignments. When this occurs, the CCA's PS Form 50, Notification of Personnel Action must be revised to reflect that they are assigned to a carrier technician position.

City carriers with questions about Article 25, higher-level pay, or filling temporarily vacant carrier technician assignments should contact their shop steward or branch officer.

Director of Safety and Health

Ergonomics (continued)

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should coordinate plans for future equipment based on anticipated flat volume to be handled at the case.)

The *ELM* contains two key ergonomic references at §section 811.22 in its Vision Statement and in Section 833.1, in which ergonomics is a required element in the development of new equipment, vehicles and facilities.

By letter dated Nov. 13, 2013 (USPS3574), the USPS provided the NALC with notice of Article 19 changes to the *ELM*, *809, Guidelines for Area/Local Joint Labor Management Safety and Health Committees*, incorporating ergonomics as a required element to be discussed in all safety meetings.

If your supervisors or managers are abandoning ergo-nomics as an element of their obligation to provide a safe work environment, we need to address this through discussion at safety committee meetings and labor-management meetings at the installation level, and then if necessary through the grievance procedure.

Violations of the maximum work-hour limits, non-compliance, remedies and grievance starters

Across the country, letter carriers are being forced to work in excess of the work-hour limitations found in the National Agreement as well as in the *Employee and Labor Relations Manual (ELM)*. This month's Contract Talk will explain these provisions and provide advice for branches when filing grievances on repetitive work-hour violations. There are two separate restrictions on the maximum number of hours a letter carrier craft employee may be required to work. These work-hour limits are stated in Article 8 of the National Agreement and the *ELM*.

One provision relating to work-hour limits is found in Section 432.32 of the *ELM,* which provides the following rule that applies to all employees, including city carrier assistants (CCAs):

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

Because this *ELM* provision limits total daily service hours, including work and mealtime, to 12 hours, an employee is effectively limited to 12 hours of work minus his or her meal period—normally 30 minutes. However, the *ELM* also permits the collective-bargaining agreement to create exceptions to this general rule, which was bargained for overtime desired list (ODL) employees as follows:

> Full-time employees not on the "Overtime Desired list may be required to work overtime only if all available employees on the "Overtime Desired" list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week. Employees on the "Overtime Desired" list:
>
> 1. may be required to work up to twelve (12) hours in a day and sixty (60) hours in a service week (subject to payment of penalty overtime pay set forth in Section 4.D for contravention of Section 5.F); and
>
> 2. excluding December, shall be limited to no more than twelve (12) hours of work in a day and no more than sixty (60) hours of work in a service week.

The exception in Article 8, Section 5.G applies to full-time employees on both the ODL and work assignment list.

Excluding December, the above provision limits those employees to no more than 12 hours of work in a day and no more than 60 hours of work in a service week. However, since the term "work" within the meaning of Article 8.5.G does not include mealtime, the 12 total hours of work in a day for carriers on the ODL may extend over a period of 12½ consecutive hours. Additionally, Article 8.5.G provides that the limits do not apply during December, when full-time employees on the ODL may be required to work more than 12 hours.

These exceptions do not apply to CCAs, part-time employees or full-time employees who are not on the ODL, all of whom are effectively limited to 11½ hours of work per day by *ELM* Section 432.32, even during December.

National Arbitrator Richard Mittenthal ruled in Case No. H4N-NA-C 21 "Fourth Issue" (C-06238) that the 12- and 60-hour limits are absolutes. Excluding December, a full-time employee may neither volunteer nor be required to work beyond those limits. This rule applies to all full-time employees on the ODL or work assignment list except during the penalty overtime exclusion period (December).

In Case No. H4N-NA-C 21 "Third Issue" (C-07323), National Arbitrator Mittenthal ruled that when a full-time employee reaches 60 hours in a service week, management is required to send the employee home—even in the middle of a scheduled day. He further held that in such cases, the employee is entitled to be paid the applicable eight-hour guarantee for the remainder of his or her scheduled day.

On Oct. 19, 1988, the national parties signed a memorandum of understanding (M-00859) to implement the above-mentioned Mittenthal awards. Part of that memorandum states:

> The parties agree that with the exception of December, full-time employees are prohibited from working more than 12 hours in a single work day or 60 hours within a service week.
>
> In those limited instances where this provision is or has been violated and a timely grievance filed, full-time employees will be compensated at an additional premium of 50 percent of the base hourly straight time rate for those hours worked beyond the 12 or 60 hour limitation.
>
> The employment of this remedy shall not be construed as an agreement by the parties that the Employer may exceed the 12 and 60 hour limitation with impunity.
>
> As a means of facilitating the foregoing, the parties agree that excluding December, once a full-time employee reaches 20 hours of overtime within a service week, the employee is no longer available for any additional overtime work. Fur-

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Violations of the maximum work hour limits (continued)

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thermore, the employee's tour of duty shall be terminated once he or she reaches the 60th hour of work.

In Case No. A90N-4A-C 94042668 (C-18926), National Arbitrator Carlton J. Snow ruled that the language in M-00859 limits the remedy for any violations of the Article 8.5.G maximum hour limits to an additional premium of 50 percent of the base hourly straight time rate. Even though this MOU explicitly states that letter carriers who have reached their 12 and/or 60-hour limit must have their tour terminated, management frequently attempts to shield themselves from liability for the violation based on National Arbitrator Snow's decision. This attempt by management ignores their obligation to instruct letter carriers who have reached the work hour limitations to end their tour. Any grievance filed alleging a violation of M-00859 should address management's failure to live up to this language.

Union representatives should keep in mind that Arbitrator Snow's award only addresses the additional remedies sought by the NALC. His award did not modify the terms of our agreement in M-00859 and the terms remain fully enforceable.

The Contract Administration Unit has created multiple new grievance starters, reflecting each category of employee, to assist branches when filing grievances on repetitive violations of the daily and weekly work hour limits. Additionally, an interview questionnaire has been developed so each affected carrier can provide an individualized impact statement. Shop stewards should include these statements in the grievance file to demonstrate the reasons and the need to request remedies that enforce the right of letter carriers to not work past these work-hour limits.

There have been several regional arbitration awards that addressed the repeat and deliberate violation of work-hour limits and the impact on letter carriers. While the remedies that have been awarded vary, numerous arbitrators agree that management has a contractual obligation to send carriers home once they reach the work-hour limits and/or allow the carrier the right to refuse without fear of discipline.

The awards in favor of the above remedies may be due to the ability of the union to show the negative impact these violations have on the letter carriers through statements and testimony. Local branches should file timely grievances on each circumstance where a carrier is forced to work beyond the hour limits as stated above. Until your office has a precedential award saying otherwise, you should follow whatever instructions your supervisor or manager gives you.

The parties have agreed to mandatory work-hour limits, and the Postal Service must honor them. In the end, time is a precious resource that cannot be recreated, and a remedy must be fashioned to prevent the violation from recurring.

To access the grievance starters, which include the interview questionnaire, from the NALC website, log on to the Members Only portal, and click the "Member documents" button, where you will find the *Shop Steward's Guide* and the grievance starters in a drop-down menu.

Director, Health Benefits

Telehealth (continued)

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you to this program. Telehealth visits are available for women 18 years of age or older, and like the prior program discussed, the telehealth women's health services program does not have a copayment.

How to start your telehealth journey

Go to nalchbptelehealth.org on your desktop computer or download the NALCHBP telehealth app from your phone or tablet's Google Play™ or Apple App Store. Once the app is downloaded and opened, enter your name and email and create a password. Next, enter your health plan ID. Lastly, choose the reason for the visit, whether "Urgent Care," "Women's Health," "Lactation Support" or "Nutrition Counseling." Once your selection is made, an online doctor is just a click away.

Keep in mind that you can also download the free NALC Health Benefit Plan Member Access Portal that also includes a single sign-on feature for the NALCHBP Telehealth program.

Heat safety

From 2015 to 2018, the Postal Service reported that a total of nearly 2,000 carriers suffered heat-related medical problems. That is more than one incident per day. This month's "Contract Talk" will delve into heat safety and the Postal Service's Heat Illness Prevention Program (HIPP).

Article 14 of the National Agreement establishes management's responsibility to provide safe working conditions and a safe working force. Article 14, Section 1 states in part:

> **Section 1. Responsibilities**
>
> It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force. The Union will cooperate with and assist management to live up to this responsibility.

Article 14, Section 3.D provides that the Postal Service will comply with Section 19 of the Williams-Steiger Occupational Safety and Health Act (OSHA). Page 14-3 of the 2022 *Joint Contract Administration Manual (JCAM)* explains that the Postal Service is subject to OSHA, stating:

> **OSHA.** The Postal Employees' Safety Enhancement Act of 1998 (PESEA) changed the status of the Postal Service as an employer under the Occupational Safety and Health Act (OSHA). Previously, the Postal Service, as a federal agency, was exempt from the private-sector provisions of the OSHA and was covered only by Section 19 of the Act and Executive Order 12196. When PESEA became effective, the Postal Service, unlike other federal agencies, became fully subject to the OSHA. This means that OSHA has jurisdiction over the Postal Service in matters relating to employee safety and health.

In addition to the express language of Article 14, Section 3.D, Article 5 incorporates management's obligations under the law.

While OSHA has begun a process to consider the establishment of heat-abatement rules and measures, it has not yet issued any specific heat-related provisions. However, OSHA does have a provision called the "General Duty Clause," which requires an employer to "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." This provision is applicable to the Postal Service under its obligations to comply with OSHA.

During the last 50-plus years, the National Institute of Occupational Safety and Health (NIOSH) has published updated materials in support of the need to establish heat safety rules. Some of the information compiled by NIOSH has been used by OSHA in its recommendations to employers on the Heat Illness Prevention Plan (HIPP).

The Postal Service, at the insistence of NALC, and as a result of many OSHA citations throughout the country, has implemented its own HIPP, which requires annual training for all city letter carriers and their supervisors. The goal of this program is to keep letter carriers safe by helping them understand the early signs of heat stress, to prevent serious injury and even death.

This program will not work if it's not followed, so shop stewards should ensure that the program is applied. The HIPP can be found on the NALC website under "Safety and Health," or through the USPS HERO portal. The HIPP will be in effect from April 1 through Oct. 31, and at any other time when weather reports issued by the National Weather Service for a particular work location indicate that the outdoor heat index temperatures are expected to exceed 80 degrees Fahrenheit during the course of a workday or work shift.

The HIPP requires annual training for all employees, regardless of potential exposure to heat, before April 1 of each year. Currently, the employer is required to conduct the training at work, on the clock, so that all letter carriers receive the necessary information. This training is also available through the Postal Service's HERO platform, which can be accessed via LiteBlue. This training covers the effects of heat on the body, risk factors and treatments. The HIPP explains the deadlines to complete the training:

> It is the responsibility of each installation head to ensure that employees complete the above-referenced HERO course. Employees must complete this training prior to April 1 each year. Employees who are absent when the training is provided are required to be provided with the training prior to returning to street duties, during the period April 1 through October 31.

Shop stewards and branch officers should ensure that all letter carriers are receiving this annual training, especially city carrier assistants, who often are subject to later start times and excluded from training and stand-up talks. New employees and employees returning from an extended absence also must be considered, as they are especially vulnerable to heat because they may not be acclimated.

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Heat safety (continued)

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The HIPP training through HERO consists of a video with questions that lasts approximately 20 minutes and concludes with a short test. Letter carriers can verify whether they have received the training (or have been incorrectly recorded as receiving the training) in the HERO portal.

Safety messaging is required under the HIPP. From April 1 through Oct. 31, the Mobile Delivery Device (MDD) will be used to send messages from the national level regarding heat exposure and the prevention of heat illness. Additionally, a safety talk is required at the local level every week. The HIPP states:

> Each week, the supervisor will give a safety talk addressing issues related to heat exposure and prevention of heat-related illness. These talks will be documented in HERO with certification of completion for all employees.

Various visual aids are to be provided to remind carriers of the importance of heat safety and display symptoms of heat-related illness. One aid is shown (Figure 2, at right) and contains symptoms and first aid responses for those symptoms. The HIPP instructs employees to call 911 if experiencing symptoms of heat stress as referenced in Figure 2, stating in part:

> Employees working away from a Postal Service facility should immediately call 911 and then their supervisor, if able, when they experience signs or symptoms of heat stress, as referenced in Figure 2 below. Proper hydration and seeking prompt medical attention should be ensured at any time the below referenced symptoms arise during the course of a workday.
>
> When in doubt, do not hesitate to call 911. Employees and supervisors may use personal cell phones and other mobile electronic devices to communicate or to contact 911.

Planning and responding to a heat-related emergency is another important component of the HIPP. The HIPP states that all employees are encouraged to take immediate action if they observe another employee exhibiting signs or symptoms of heat-related illness. Employees should err on the side of caution and immediately call 911 whenever an employee complains of or is observed exhibiting signs of heat-related illness and it is determined that medical intervention may be necessary.

If there is a heat injury, shop stewards should investigate what, if any, knowledge and interaction supervisors had regarding the injured employee. Supervisors have a responsibility to be trained and to recognize the symptoms of heat illness. Should the supervisor have been aware of the potential heat illness but took insufficient or no action to seek medical treatment? Additionally, the HIPP requires that employees with symptoms cannot be left alone, stating:

Figure 2

	Symptoms	First Aid*
Heat Stroke	• Confusion • Fainting • Seizures • Excessive sweating or red, hot, dry skin • Very high body temperature	Call 911 While waiting for help: • Worker should rest in a shady, cool area • Loosen clothing, remove outer clothing • Use a fan and place cold packs in armpits, if available • Wet worker with cool water, apply ice packs, cool compresses, or ice, if available • Drink fluids (preferably water) as soon as possible • Stay with worker until help arrives
Heat Exhaustion	• Cool, moist skin • Heavy sweating • Headache • Nausea or vomiting • Dizziness • Light headedness • Weakness • Thirst • Irritability • Fast heartbeat	Call 911 While waiting for help: • Sit or lie down in a cool, shady area • Drink plenty of water or other cool beverages • Use cool compresses or ice packs, if available • Do not return to work that day
Heat Cramps	• Muscle spasms • Pain • Usually in abdomen arms or legs	• Have worker rest in shady, cool area • Worker should drink water or other cool beverages • Wait a few hours before allowing worker to return to strenuous work • Have worker seek medical attention if cramps don't go away
Heat Rash	• Clusters of red bumps on skin • Often appears on neck, upper chest, folds of skin	• Try to work in a cooler, less humid environment when possible • Keep the affected area dry

*Remember, if you are not a medical professional, use this information as a guide only to help workers in need.
**Before an employee who has been absent due to heat-related illness may return to work, management may request medical documentation clearing the employee to work. ELM §§ 865.1 and 865.3.

> Employees observed by management exhibiting signs or symptoms of a heat-related illness will be monitored and shall not be left alone or sent home without being provided with emergency medical service.

The above provision is very important. Heat-related illness can be worse than realized and can get worse even after exposure has ceased. Sometimes supervisors send employees home or let them go home without medical care, potentially putting them in harm's way. This can result in an employee passing out while behind the wheel of a vehicle, or at home without supervision. *Remember that heat stroke can be fatal if not treated immediately.*

To provide letter carriers with the proper tools, the HIPP requires management to ensure that:

- Potable water sources are available in all facilities and are monitored during regular safety inspections.
- A postcard promoting heat stress awareness is mailed annually to all employees.
- Stickers are installed in every vehicle identifying the signs and symptoms of heat-related illness.
- Laminated cards containing information identifying the signs and symptoms of heat-related illness are provided to all carriers and supervisors for attachment to identification badges.
- An escalation process is put in place to prioritize all requests for HVAC repairs and temporary abatement efforts in postal facilities.
- Postal vehicle fans are included in all preventive maintenance inspections and any necessary repairs are made.
- When the HIPP is in effect, supervisors, while performing required street observations, will include HIPP-related conversations with employees paying attention to those who are newly hired or returning from extended absence of seven or more consecutive days, if known.

Shop stewards who perform investigations related to heat safety have many factors to consider. Stewards can look to OSHA's *Using the Heat Index: A Guide for Employers* (found at the NALC website under "Safety and Health"), as well as other OSHA guidance, to provide some considerations, such as, did management:

- Receive training on the HIPP and can it recognize heat symptoms?
- Track and communicate the heat index daily?
- Check in on any employees, and if so, how frequently?
- Take any action to assist carriers experiencing symptoms, and if so, when and what?
- Provide or encourage workers to wear sunscreen?
- Establish a buddy system or instruct supervisors to watch workers for signs of heat-related illness?
- Schedule frequent breaks in cool, shaded areas?
- Establish and enforce work/rest schedules?
- Create an emergency response plan and consider the availability of local medical services?
- Provide potable water?
- Designate a person well-informed on heat-related illness to determine appropriate work/rest schedules?
- Remind workers to drink plenty of water—about 8 ounces every 15 to 20 minutes?
- Establish who will provide first aid until an ambulance arrives?
- Provide workers with personal cooling measures (such as cooling vests, cool mist stations, water-dampened clothing, etc.)?
- Assign new and unacclimatized workers lighter work and longer rest periods? Were these employees monitored more closely?

Every post-incident investigation should include a review of the heat index on and leading up to the incident. Remember that the heat index values by the National Weather Service and OSHA are devised for shady, light wind conditions. Exposure to full sunshine can increase heat index values by up to 15 degrees.

In accordance with Article 14, Section 2.c of the National Agreement, grievances alleging that an employee is being required to work under unsafe conditions may be filed at Formal Step A within 14 days of notifying the employee's supervisor. PS Form 1767 *Report of Hazard, Unsafe Condition or Practice* is a great way to notify a supervisor in writing of a hazard or unsafe condition prior to initiating a grievance directly at Formal Step A. The use of PS Form 1767 is always a good idea, to give management the opportunity to immediately rectify the situation.

Safety grievances can still be filed at Informal Step A if desired. *JCAM* page 14-2 explains:

> **Safety Grievances Filed at Formal Step A.** Article 14.2.(c) provides that safety and health grievances may be filed directly at Formal Step A of the grievance procedure. However, if a health or safety grievance is filed at Informal Step A instead, it is not procedurally defective for that reason.

The Postal Service has received multiple citations from OSHA alleging violations of OSHA's general duty clause mentioned earlier. At a hearing by the Occupational Safety and Health Review Commission (OSHRC Docket Nos. 16-1713, 16-1872, 17-0023, 17-0279), the Postal Service had an expert witness (Dr. Shirley Conibear) testify. The OSHRC noted:

> These inconsistencies raise questions about the credibility of Conibear's medical opinions, such as that one of the San Antonio carriers' profuse sweating was "not related in any way" to his having walked five miles while carrying a thirty-pound satchel when the heat index was above 100°F, and her claim that he would have started profusely sweating that same afternoon even if he had been sitting at home in air conditioning.

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Contract Talk
by the Contract Administration Unit

Heat safety (continued)

(continued from page 35)

This comment by the OSHRC regarding the Postal Service's expert witness should remind letter carriers that we cannot rely solely on management to maintain safety. Letter carriers must look out for each other and make safety a priority; Article 14, Section 1 explains that "the Union will cooperate with and assist management to live up to this responsibility."

During the same hearing, the Postal Service stated that it provides unlimited comfort breaks. The OSHRC decision states:

> The Postal Service also maintains that it already gives carriers "rest, lunch, and unlimited comfort breaks" and acclimatizes new carriers through its on-the-job training program...

In addition to a grievance, if management does not take steps to keep letter carriers safe, shop stewards and affected letter carriers should consider the need to file a safety and health complaint with the U.S. Department of Labor through osha.gov. Employees or their representatives have a right to file a confidential complaint and request an OSHA inspection of the workplace if they believe there is a serious hazard or if they believe the employer is not following OSHA standards. The complaint should be filed as soon as possible.

Carriers injured in the heat should file a workers' compensation claim to ensure that their medical care and any lost wages are covered appropriately.

Heat safety is of the utmost importance as we head into the hottest months of the year. Shop stewards are vital in this quest to ensure that management follows its own program and actively works to reduce and mitigate heat injuries. This becomes more and more important as letter carriers spend more time on the street (more exposure) all while our world continues to warm and experience more extreme weather conditions.

Executive Vice President

The good, the bad and the ugly (continued)

(continued from page 24)

recognition. Branches should also consult their membership records, as they may provide additional information that is not available through the Headquarters membership database. As an added feature, the platform not only identifies the current membership milestone recognition that a member is entitled to receive, but also any past recognitions that have not yet been awarded. This provides branches an easy way to get caught up on membership milestone recognitions as addressed in Article 2, Section 5 (a) of the *Constitution*.

NALC will continue to approach information technology in a secure and professional manner, incorporating industry best practices to stay ahead of the curve and avoid unnecessary interruptions of data flow and accessibility.

Vice President

Beyond the 22 LMOU items (continued)

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On another note, on March 30, I had the honor and privilege of attending Branch 60's retirement ceremony for letter carrier Anthony Spartaccini out of Stamford, CT (see photo at right). Brother Spartaccini has been an active letter carrier for more than 65 years and has amassed more than 6,000 hours of sick leave. He has been an NALC member nearly the entire time. Brother Spartaccini picketed the line in the 1970 Great Postal Strike and is considered part of the greatest generation of letter carriers, who paved the way for collective bargaining for all letter carriers. Brother Spartaccini epitomizes the highest level of dedication, devotion, work ethic and unionism.

I would like to congratulate him on his retirement and wish him health and happiness in the next chapter of his life.

Contract Talk
by the Contract Administration Unit

Contract Administration Unit
Paul Barner, Executive Vice President
James D. Henry, Vice President
Christopher Jackson, Director of City Delivery
Manuel L. Peralta Jr., Director of Safety and Health
Dan Toth, Director of Retired Members
Jim Yates, Director of Life Insurance

Annual leave carryover

On Sept. 3, 2020, the NALC and USPS agreed to a Memorandum of Understanding (MOU) Re: Annual Leave Carryover for Leave Year 2021, M-01928 in NALC's Materials Reference System, which increased the carryover limit to help avoid forfeiture of unused annual leave caused by the effects of the COVID-19 pandemic. As the pandemic continued to make travel and social gatherings difficult, this increased carryover was extended into the 2022 and 2023 leave years. Although the impact of the pandemic continues to fade, the parties recently agreed to a new MOU, M-01993, to maintain the increased annual leave carryover for leave year 2024. This month's Contract Talk will explain the annual leave provisions, annual leave carryover, and the agreed-upon provisions of M-01993.

Article 10 of the National Agreement covers general leave provisions such as choice of vacation period, vacation planning and sick leave. Article 10, Section 2, incorporates Section 510 of the *Employee and Labor Relations Manual (ELM),* which contains the rules and procedures related to the Postal Service leave program. Section 512.321 of the *ELM,* which contains the provision regarding annual leave carryover, states:

> The maximum carryover amount, i.e., the maximum amount of previously accumulated annual leave with which an employee may be credited at the beginning of a year, is as follows:
>
> a. Bargaining Unit Employees. The maximum leave carryover for bargaining unit employees is 55 days (440 hours).

As explained in the *ELM*, the typical maximum carryover amount is 440 hours. Accumulated annual leave exceeding 440 hours at the end of the leave year is lost and not rolled over into the next leave year.

Under the provisions of the current agreement, the maximum carryover from leave year 2023 to leave year 2024 is increased to 520 hours. This is explained in M-01993:

> The parties agree that for leave year 2024, regular work force career employees covered by the USPS-NALC Agreement may carry over 520 hours of accumulated annual leave from leave year 2023 to leave year 2024.
>
> In all other respects, the Employee and Labor Relations Manual (ELM) provisions for payment of accumulated leave are not changed because of this Memorandum.
>
> This MOU will expire December 31, 2024.

Just as in the predecessor agreements, M-01993 also affects terminal leave payments, which are made to separating employees for their balance of accrued annual leave. These payments are increased to a maximum of 520 hours through the life of M-01993, which expires Dec. 31, 2024. The provisions regarding terminal leave payments are found in Section 512.732.b of the *ELM*, which states in part:

> b. Bargaining Unit Employee. Bargaining unit employees may receive a lump sum leave payment:
>
> (1) If separating other than under the Voluntary Early Retirement Authority (VERA), for accumulated annual leave carried over from the previous year; accrued annual leave for the year in which they separate, up to the carryover maximum for their bargaining unit (see 512.32); any unused donated leave; and for full-time and part-time regular employees, holidays that fall within the terminal leave period. Any part of the unused annual leave earned during the leave year of separation that is in excess of the maximum carryover amount is granted prior to separation rather than paid out in the form of a lump sum payment. No payment is made for unused leave that the employee would have been required to forfeit at the end of the leave year.

The provisions of M-01993 apply only to career city letter carriers. City carrier assistants (CCAs) do not carry over leave from one appointment to another or when they are converted to career status. Instead, CCAs who are separated or converted to career status receive a terminal leave payment for any leave balance at the end of the CCA appointment.

Without additional extensions, the leave carryover and terminal leave payment will return to a maximum of 440 hours (as reflected in *ELM* Section 512.321.a) on Jan. 1, 2025.

Article 10, Section 3, of the National Agreement establishes a nationwide program for vacation planning for employees in the regular workforce, with emphasis on the choice vacation periods or variations thereof. Article 30, Sections B.4 through B.12, allow the local parties to negotiate provisions formulating a local leave program in the local memorandum of understanding (LMOU). Any LMOU provisions regarding the local leave program must be consistent with the general provisions of Article 10, Section 3.B, which states:

> B. Care shall be exercised to assure that no employee is required to forfeit any part of such employee's annual leave.

Article 10, Section 4, sets out the procedure for vacation planning. Each year, the installation head shall meet with the representatives of the union to review local service needs as soon after Jan. 1 as practical. As stated in Article 10, the installation head shall then:

> 1. Determine the amount of annual leave accrued to each employee's credit including that for the current year and the amount he/she expects to take in the current year.
>
> 2. Determine a final date for submission of applications for vacation period(s) of the employee's choice during the choice vacation period(s).
>
> 3. Provide official notice to each employee of the vacation schedule approved for each employee.

In accordance with Article 10, during vacation planning, the local parties should determine the amount of annual leave accrued to each employee's credit, including that for the current year and the amount he or she expects to take in the current year. As the carryover maximum will return to 440 hours from leave year 2024 to leave year 2025, care should be taken to ensure that no employees are required to forfeit any part of their annual leave.

Family and Medical Leave Act (FMLA)

The Family and Medical Leave Act (FMLA) is a federal law that Congress enacted in 1993 requiring many employers, including the Postal Service, to grant eligible employees time off work without penalty under certain conditions. Article 10 of the National Agreement incorporates this law into the leave program for city letter carriers. The FMLA guarantees eligible letter carriers up to 12 weeks of leave each postal leave year for:

- A new child in the family—by birth, by adoption or by placement in foster care;
- Caring for a family member with a serious health condition;
- The employee's own serious health condition that prevents him or her from performing the job; or
- Qualifying exigencies arising out of the fact that the employee's family member is on or has been notified of "covered active duty" in the armed forces.

The FMLA also guarantees eligible letter carriers up to 26 weeks of leave in a single 12-month period to care for a "covered" service member with a "serious injury or illness," if that service member is their spouse, son, daughter, parent or next of kin.

The FMLA guarantees time off, whether paid or unpaid. The type of leave taken depends on the reasons for the leave and the usual postal leave regulations. Eligibility criteria, medical certification guidelines and other detailed rules govern letter carrier rights to FMLA leave. The rules are found in the federal law and in the Code of Federal Regulations (Chapter 29, C.F.R., Part 825). The national parties jointly created a summary overview of the Family and Medical Leave Act of 1993 dated Nov. 24, 2015 (M-01866). This document provides a mutual understanding of the national parties on issues related to the FMLA and can be found in NALC's Materials Reference System (MRS) at nalc.org/mrs.

According to the act, employers are prohibited from interfering with, restraining or denying the exercise of any rights provided by FMLA. The employer cannot retaliate against an employee for exercising or attempting to exercise FMLA rights. Employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions. Similarly, FMLA-covered absences may not be used in any disciplinary actions. Employees cannot waive, nor may employers induce employees to waive, their prospective rights under FMLA.

FMLA is not a separate category of leave and does not provide letter carriers with any additional paid leave. Sick and annual leave accrual amounts remain the same as what carriers are entitled to under the National Agreement. Employees may use sick leave, annual leave, or leave without pay (LWOP) for FMLA-protected absences in accordance with current leave policies. Though city carrier assistants (CCAs) earn only up to 13 days of annual leave per year, CCAs are covered under FMLA and are eligible to use both annual leave and LWOP for FMLA-protected absences.

All employees, including CCAs, are eligible for FMLA-protected leave if they meet two requirements: 1) the employee must have worked for the Postal Service for at least 12 months, and 2) must have accrued at least 1,250 work hours during the 12-month period immediately preceding the leave. CCA breaks in service do not cancel out accrued time of service for FMLA purposes since the 12 months do not have to be consecutive. The months of service may be accrued at any time during the seven-year period immediately preceding the leave. Only actual hours worked, not time spent on paid leave, are used to determine whether an employee has met the 1,250-work hour requirement.

"Though city carrier assistants (CCAs) earn only up to 13 days of annual leave per year, CCAs are covered under FMLA and are eligible to use both annual leave and LWOP for FMLA-protected absences."

Every eligible postal employee is entitled to take up to 12 workweeks of FMLA leave in a 12-month period for any of the reasons listed below:

- A serious health condition that makes the employee unable to perform the essential functions of his or her job.
- To care for the employee's spouse, child or parent who has a serious health condition. Such care may involve instances where the family member is unable to care for his or her own medical, safety or other needs because of a serious health condition, or needs help in being transported to the health care provider. Such care also might involve providing psychological

(continued on next page)

FMLA (continued)

(continued from previous page)

comfort and reassurance to the family member with a serious health condition.

- The birth of a child and to bond with the newborn child within one year of birth. Both mothers and fathers have the same right to take FMLA leave for the birth of a child. Birth and bonding leave must be taken as a continuous block of leave unless the Postal Service agrees to allow intermittent leave. However, if a child has a serious health condition, a parent is entitled to use FMLA leave intermittently or to work a reduced schedule to care for the child even without an agreement in place with the employer.

"[E]mployers are prohibited from interfering with, restraining or denying the exercise of any rights provided by FMLA. The employer cannot retaliate against an employee for exercising or attempting to exercise FMLA rights. Employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions. Similarly, FMLA-covered absences may not be used in any disciplinary actions."

- The placement with the employee of a child under adoption or foster care and to bond with the newly placed child within one year of placement. FMLA leave may be taken before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. For example, the employee may be entitled to FMLA leave to attend counseling sessions, appear in court, consult with his or her attorney, or travel to another country to complete an adoption. FMLA leave to bond with a child after placement must be taken as a continuous block of leave unless the Postal Service agrees to allow intermittent leave.
- Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter or parent is a covered military member on "covered active duty." Qualifying exigencies are situations arising from the military deployment of an employee's spouse, son, daughter or parent to a foreign country. Qualifying exigencies for which an employee may take FMLA leave include making alternative child care arrangements for a child of the military member when the deployment of the military member necessitates a change in the existing child care arrangement; attending certain military ceremonies and briefings; taking leave to spend time with a military member on rest and recuperation leave during deployment; making financial or legal arrangements to address a covered military member's absence; or engaging in certain activities related to care of the parent of the military member while the military member is on covered active duty.

An eligible employee also may take up to 26 workweeks of FMLA military caregiver leave in a single 12-month period to care for a covered service member (current member or veteran of the National Guard, reserves or regular armed forces) with a serious injury or illness incurred or aggravated in the line of duty, if the employee is the spouse, son, daughter, parent or next of kin of the covered service member.

Under the law, FMLA has specific definitions for family members. A parent is defined as a biological, adoptive, step or foster parent, or an *in loco parentis*. An *in loco parentis* is a person who acts as a parent toward a son or daughter, or a person who had such responsibility for the employee when the employee was a child. A spouse is defined as the other person with whom an individual entered into a marriage as defined by the applicable state laws where the marriage occurred. This includes common law marriages. For the purposes of applying the FMLA, all legally married couples who are otherwise eligible for FMLA-protected leave can now take such leave for a qualifying FMLA reason, regardless of where they live or work. A son or daughter is defined as biological, adopted, foster, *in loco parentis* (defined above under definition of parent), legal ward or stepchild under the age of 18; or a child 18 or over who has a disability as defined under the Rehabilitation Act and where the disability makes the person incapable of self-care.

The FMLA also has created several separate definitions of family members for both categories of military family leave. Son or daughter, for the purposes

of qualifying exigency leave, means the employee's biological child, adopted child, foster child, stepchild, legal ward, or a child for whom the employee stood *in loco parentis*, who is on covered active duty or call to covered active-duty status, regardless of age. For purposes of military caregiver leave, a son or daughter of a covered service member is the service member's biological, adopted or foster child, stepchild, legal ward, or a child for whom the service member stood *in loco parentis*, and who is of any age. Additionally for military caregiver leave, a parent of a covered service member is a covered service member's biological, adoptive, step or foster parent, or any other individual who stood *in loco parentis* to the covered service member. Next of kin of a covered service member, for purposes of military caregiver leave, is the nearest blood relative, other than the covered service member's spouse, parent, son or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under FMLA.

When the need for FMLA leave is foreseeable (e.g., pregnancy) employees should notify management of the need for leave and provide appropriate supporting documentation (PS Form 3971, Request for or Notification of Absence) at least 30 days before the absence is to begin. If 30 days' notice is not practicable, employees should notify management as soon as possible (i.e., the same day the employee learns of the need for leave or the next business day). When the need for leave is not foreseeable, an employee must comply with the employer's usual and customary notice and procedural requirements for requesting leave.

Employees must provide certification for FMLA-covered absences to the Postal Service within 15 days of the date of the absence (unless not practicable under the circumstances despite the employee's diligent good-faith efforts) and correct insufficient certification within seven days (unless not practicable under the circumstances despite the employee's diligent good faith efforts). The certification may be in any format, including the NALC FMLA forms, if it provides the information required for certification by the implementing regulations of the FMLA. These forms can be found on the NALC website under Workplace Issues›Resources›FMLA.

"When the need for FMLA leave is foreseeable (e.g., pregnancy) employees should notify management of the need for leave and provide appropriate supporting documentation (PS Form 3971, Request for or Notification of Absence) at least 30 days before the absence is to begin. If 30 days' notice is not practicable, employees should notify management as soon as possible (i.e., the same day the employee learns of the need for leave or the next business day)."

Can management require "supporting documentation" for an absence of three days or less for an employee's absence to be protected under the FMLA?

In M-01866, the parties agreed:

> The Postal Service may require an employee's leave to be supported by an FMLA medical certification, unless waived by management, in order for the absence to be protected. When an employee uses leave due to a condition already supported by an FMLA certification, the employee is not required to provide another certification in order for the absence to be FMLA protected.

Keep in mind, in accordance with the *Employee Labor Manual (ELM)* Section 513, if an employee uses sick leave for absences of more than three days, the employee is required to submit medical documentation or other acceptable evidence of incapacity for work or of the need to care for a family member and, if requested, substantiation of the family relationship, even if the absence is due to a condition that already is supported by FMLA certification.

If you have a situation that qualifies for absences under the provisions of the Family and Medical Leave Act, make sure to exercise your rights outlined above to protect yourself. If you have any additional questions or concerns about the FMLA, you should consult with your shop steward or NALC branch officer.

Contract Talk
by the Contract Administration Unit

Street supervision, GPS data and disciplinary action

In some areas of the country, NALC has received reports of management using data from the Mobile Delivery Device (MDD) as a basis for disciplinary action against city carriers. The current scanning device uses global positioning system (GPS) data to track the movement of letter carriers while on the route. The MDD tracks movement of the device by recording what is called "breadcrumb" data. In addition to tracking the movement of the MDD, the device also records the amount of time the scanner is stationary. In the discipline letters, management is alleging that city carriers are failing to perform conscientiously and effectively based on reported stationary events or cumulative stationary time recorded by the MDD. Management in these locations is attempting to substitute GPS data for actual street management and observations. This month's Contract Talk will help explain management's responsibilities when performing street supervision and when deciding if a carrier is not satisfactorily performing their street duties.

Handbook M-41, City Delivery Carriers Duties and Responsibilities reminds city carriers that they may be supervised anytime while they are working. Section 16 of the *M-41* states: "Carriers may expect to be supervised at all times while in performance of their daily duties."

While carriers should expect to be supervised at any time, management has certain responsibilities when performing this street supervision. These requirements are found in Section 134 of *Handbook M-39, Management of Delivery Services,* which states in pertinent part:

> 134.12 Accompanying carriers on the street is considered an essential responsibility of management and one of the manager's most important duties. Managers should act promptly to correct improper conditions. A positive attitude must be maintained by the manager at all times.

Section 134.3 of the *M-39* also identifies specific circumstances that may require additional street supervision:

> Certain criteria may call attention for individual street supervision. When overtime or auxiliary assistance is used frequently on a route (foot, motorized, parcel post, collection, relay), when a manager receives substantial evidence of loitering or other actions or lack of action by one or more employees, or when it is considered to be in the interest of the service, the manager may accompany the carrier on the street to determine the cause, or meet the carrier on the route and continue until such a time as the manager is satisfied. No advance notice to the carrier is required.

While there is no requirement for management to notify carriers in advance, Sections 134.21 and 134.22 of the *M-39* provide the proper approach management must use for conducting street supervision:

> 134.21 The manager must maintain an objective attitude in conducting street supervision and discharge this duty in an open and above board manner.
>
> 134.22 The manager is not to spy or use other covert techniques. Any employee infractions are to be handled in accordance with the section in the current National Agreement that deal with these problems.

This section of the *M-39* requires management to use a straightforward, upfront manner and not to spy on carriers when supervising them on the street.

As reported, in some places management is attempting to use GPS data as an alternative to physical street supervision. GPS data is not always accurate and does not tell the whole story.

When discussing the value of MDD GPS data, city carriers should be aware the computer systems involved record stationary time when the MDD appears to not be moving from one GPS location to another. Stationary events are recorded in USPS's Delivery Management System (DMS) or Regional Intelligent Mail Server (RIMS).

There are a variety of reasons why a letter carrier and their MDD may be recorded as stationary. For example, the MDD might not register as moving if the carrier is servicing a centralized mail location or cluster box unit (CBU). Perhaps the MDD isn't moving because the carrier is picking up parcels or fueling the delivery vehicle. Electronic stationary time could be recorded while the carrier is on their break or lunch, or is replenishing mail. The MDD may be inactive when the carrier is using a comfort stop to recover and hydrate from the heat. Stationary time, in and of

itself, is not a violation of any handbook or manual. The absence of movement of the MDD does not mean the carrier is not working.

MDD connectivity also can affect the reliability of the GPS and breadcrumb data obtained. Like a cell phone, the MDD sends and receives information, including GPS data, when connected to a cellular network. Also, like cell phones, walls, vehicle roofs, tall buildings, mountains and other obstructions can interfere with the scanner's connection to the network. This could affect how accurately the scanner records the movement and positioning of the device. Additionally, extreme weather, inaccurate mapping and insufficient cellular service can have an impact on the accuracy of GPS and breadcrumb data. A malfunctioning or dead battery also can negatively affect how accurately the MDD communicates over the cellular network. GPS data and any associated reports must always be reviewed for errors. Any perceived time-wasting practices alleged against city carriers should be documented with actual street observation.

In order for management to sustain any disciplinary action against letter carriers, it must satisfy all of the requirements related to the just cause principle contained in Article 16 of the National Agreement. Simply put, the just cause provision requires a fair and provable justification for discipline.

The *Joint Contract Administration Manual (JCAM)* defines just cause into six sub-questions that arbitrators use when deciding whether to uphold disciplinary action. These questions are summarized here, and the complete explanation of just cause can be found beginning on *JCAM* page 16-1.

- **Is there a rule?** If so, was the employee aware of the rule? Was the employee forewarned of the disciplinary consequences for failure to follow the rule?
- **Is the rule a reasonable rule?** Management must make sure that rules are reasonable, based on the overall objective of safe and efficient work performance. Management's rules should be reasonably related to business efficiency, safe operation of our business, and the performance we might expect of the employee.
- **Is the rule consistently and equitably enforced?** A rule must be applied fairly and without discrimination.
- **Was a thorough investigation completed?** Before administering the discipline, management must make an investigation to determine whether the employee committed the offense. Management must ensure that its investigation is thorough and objective.

"As reported, in some places management is attempting to use GPS data as an alternative to physical street supervision. GPS data is not always accurate and does not tell the whole story."

- **Was the severity of the discipline reasonably related to the infraction itself and in line with that usually administered, as well as to the seriousness of the employee's past record?**
- **Was the disciplinary action taken in a timely manner?** Disciplinary actions should be taken as promptly as possible after the offense has been committed.

The fourth sub-question of just cause requires that before the decision to impose discipline is made, management must conduct a full, fair and impartial investigation, including giving the letter carrier an opportunity to respond to the charges. It is evident that there may be many reasons why city carriers' GPS data may be unreliable or show the MDD as stationary. These stationary events may or may not be accurate; it is management's burden to prove the charges in the disciplinary action are substantiated.

As communicated in this article and the *JCAM,* management has specific contractual and handbook responsibilities it must fulfill when assessing city carrier performance, effectiveness and efficiency. As always, if a carrier has been issued a disciplinary action letter, the carrier should provide a copy of it to their steward immediately. The steward can then investigate to determine if management has satisfied its obligations when issuing the discipline.

Overtime equitability

The equitable distribution of overtime hours and opportunities is an important benefit to the city letter carrier craft that ensures parity. In most cases, such as bidding on assignments and selecting annual leave during the choice vacation period, seniority is the deciding factor. The distribution of overtime to full-time letter carriers on the overtime desired list (ODL) is one of the exceptions to the seniority rules. Under Article 8 of the National Agreement, management is required to ensure that the overtime hours, as well as the opportunities to work overtime, are kept equitable among those carriers on the ODL.

Article 8, Section 5 contains the provisions regarding equitability and explains that when there is a need for overtime, employees from the ODL will be selected. This section also explains that during the quarter, every effort will be made to distribute the opportunities for overtime equitably among those signed up to the ODL. Equitability applies only to carriers who have signed up to the ODL.

Article 8, Section 5.C.2 of the National Agreement states in part:

> a. When during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected from the "Overtime Desired" list.
>
> b. During the quarter every effort will be made to distribute equitably the opportunities for overtime among those on the "Overtime Desired" list.

Of course, to distribute the overtime equitably, there needs to be a record or system to monitor the distribution. Article 8, Section 5.C.2.c explains:

> c. In order to insure equitable opportunities for overtime, overtime hours worked and opportunities offered will be posted and updated weekly.

Although the above provision is a requirement for management, many branches and shop stewards discover that the best way to prevent inequitable overtime distribution is to regularly review the posting and alert management to opportunities to improve the distribution. Heading off the problem avoids depriving letter carriers of their rights and the need to file a grievance at the end of the quarter. Efforts to fix the problem also can be used as evidence to support a remedy when management does not make appropriate corrections to distribute the overtime.

The methods used to calculate the inequitable distribution of overtime can vary, depending on the circumstances. Shop stewards who are unsure what constitutes equitability in their section or installation should consult their branch president or national business agent for guidance.

Prior to the 2016 National Agreement, the only overtime that was counted when determining equitability was the time an ODL carrier worked more than eight hours off of their bid assignment, or all work on a non-scheduled day. This provision made determining equitability more difficult, especially in situations where a letter carrier was properly assigned in the Time and Attendance Collection System (TACS). This language was changed in the 2016 National Agreement to count all hours worked, whether on or off a letter carrier's regular assignment on a regularly scheduled day. All overtime worked on a non-scheduled day continues to be counted as it was prior to 2016. The requirement to count all overtime is found in Article 8, Section 5.C.2.e, which states:

> e. All overtime hours worked by, and all opportunities offered to, employees on the "Overtime Desired" list, regardless of whether the overtime/opportunity is on or off the employee's own route, will be considered and counted when determining quarterly equitability.

The *2022 Joint Contract Administration Manual (JCAM)* explains that the number of hours of overtime as well as the number of opportunities for overtime must be considered. Missed opportunities for overtime must be made up for in the quarter. Page 8-11 of the *JCAM* states:

> Missed opportunities for overtime—i.e. one ODL carrier worked instead of another—must be made up for with equitable distribution of overtime during the quarter unless the bypassed carrier was not available—i.e. the carrier was on leave or working overtime on his/her own route on a regularly scheduled day, etc.

Article 8, Section 5.C.2.f clarifies how work on holidays or designated holidays is counted, stating:

> f. Only overtime hours worked or opportunities offered beyond eight hours on a holiday or designated holiday will be considered and counted when determining equitability.

Full-time flexible (FTF) employees can complicate equitability as they might have flexible reporting locations within an installation. When a FTF letter carrier works in the same overtime section for the entire quarter, determining their equitability is straightforward and the same as other ODL carriers. However, if the FTF works in multiple overtime sections during the quarter, only the share of overtime from the time they sign the ODL in the new section will be considered. Page 8-12 of the *JCAM* explains that FTF letter carriers will not be moved to circumvent their equitability rights, stating:

> However, full-time flexible employees will not be moved to another overtime section solely to circumvent the provisions of Article 8.5.C above.

Although the rules governing the distribution of overtime to letter carriers on the ODL are straightforward, manage-

(continued on next page)

Overtime equitability (continued)

ment often will fail to keep these carriers equitable during the quarter. When this occurs, letter carriers who were not kept equitable are entitled to a remedy for the violation. The appropriate remedy for violations of Article 8, Sections 5.C.2.a-c was established by National Arbitrator Howard Gamser in case NC-S-5426, April 3, 1979. According to Arbitrator Gamser's award, management must either pay the letter carrier who was not equitable during the quarter or offer a makeup opportunity during the next quarter. The explanation of Arbitrator Gamser's award is found on page 8-12 of the *JCAM*, which states in part:

> [T]he Postal Service must pay employees deprived of equitable opportunities for the overtime hours they did not work only if management's failure to comply with its contractual obligations under Article 8.5.C.2 shows "a willful disregard or defiance of the contractual provision, a deliberate attempt to grant disparate or favorite treatment to an employee or group of employees, or caused a situation in which the equalizing opportunity could not be afforded within the next quarter." In all other cases, Gamser held, the proper remedy is to provide "an equalizing opportunity in the next immediate quarter, or pay a compensatory monetary award if this is not done..."

Determining the proper remedy requires an investgation into the specific facts of the case and applying Arbitrator Gamser's award.

Equitable distribution of overtime protects letter carriers, but it must be monitored and maintained to be effective. Thanks to all the shop stewards and branch officers who play a role in enforcing the National Agreement.

In Memoriam

NALC offers deepest sympathies to the families and friends of departed brothers and sisters

Victor L. Chandler	Br. 1047	Gadsden, AL
Dusty S. Rhodes	Br. 469	Mobile, AL
Dale Baker	Br. 704	Tucson, AZ
Frank A. Doll Jr.	Br. 1100	Garden Grove, CA
Edmund Gennawey	Br. 1100	Garden Grove, CA
Barney L. Gentry	Br. 1100	Garden Grove, CA
John A. Lord	Br. 1100	Garden Grove, CA
Susan M. Tinoco	Br. 1100	Garden Grove, CA
Hubert R. True	Br. 1100	Garden Grove, CA
Matthew P. Hurley	Br. 1111	Greater E. Bay, CA
John B. Bowker	Br. 24	Los Angeles, CA
Thurza M. Davis	Br. 24	Los Angeles, CA
Kenneth W. Evenhuis	Br. 24	Los Angeles, CA
Edward H. Garcia	Br. 24	Los Angeles, CA
Alan F. Levene	Br. 24	Los Angeles, CA
Angel M. Salgado	Br. 24	Los Angeles, CA
Saro A. Sancedo	Br. 24	Los Angeles, CA
Ramona S. Mattos	Br. 1291	Modesto, CA
Arthur L. Bracco	Br. 133	Sacramento, CA
Harry V. Richardson	Br. 133	Sacramento, CA
Harry E. Seal	Br. 70	San Diego, CA
Raymond E. Allison	Br. 47	Denver, CO
Morris J. Clark	Br. 47	Denver, CO
Ronald L. Dodds	Br. 47	Denver, CO
Alfredo Gonzalez	Br. 324	Greeley, CO
Harold F. Block	Br. 1105	Longmont, CO
Wynona J. Kinstner	Br. 229	Pueblo, CO
Chester G. Istvan	Br. 32	Bridgeport, CT
Ignatius J. Maniscalco	Br. 86	Hartford, CT
James P. Sullivan	Br. 86	Hartford, CT
Jerry J. Fortin	Br. 60	Stamford, CT
Paul T. Pierrat	Br. 60	Stamford, CT
William M. Braswell	Br. 142	Washington, DC
James E. Gibson	Br. 1091	Central FL
William C. Martin	Br. 2008	Clearwater, FL
Juan C. Bolivar	Br. 2591	Deland, FL
Rudolph R. Manuel	Br. 2550	Fort Lauderdale, FL
James W. Myers	Br. 53	North FL
Cleo D. Stafford	Br. 1071	South FL
Scott L. Gmelin	Br. 1477	West Coast FL
Edward G. Sax	Br. 1477	West Coast FL
Roger L. Edmondson	Br. 1690	West Coast FL
David D. Harvey	Br. 263	Augusta, GA
Kingley S. Andrews	Br. 219	Aurora, IL
Thomas A. Barnes	Br. 219	Aurora, IL
John E. Burghardt	Br. 219	Aurora, IL
Gerald R. Fermazin	Br. 219	Aurora, IL
William Nevicosi	Br. 219	Aurora, IL
Janis M. Martin	Br. 1870	Downers Grove, IL
Art Johnson	Br. 1151	Naperville, IL
William J. Stieren	Br. 80	Springfield, IL
Roger T. Craig	Br. 39	Indianapolis, IN
Harry J. Douglass	Br. 39	Indianapolis, IN
Edward L. Early	Br. 39	Indianapolis, IN
David W. Lawson	Br. 39	Indianapolis, IN
Tine P. Martin	Br. 39	Indianapolis, IN
Gary A. Milbrath	Br. 39	Indianapolis, IN
William D. Penick	Br. 39	Indianapolis, IN
Wayne C. Ellis	Br. 201	Wichita, KS
Joseph A. Mueller	Br. 201	Wichita, KS
Jonrika A. Lastie	Br. 6377	Mandeville, LA
Mark Heywood	Br. 391	Central ME Mgd.
Frank F. Braunstein	Br. 176	Baltimore, MD
Paul A. Kelly	Br. 4422	Glen Burnie, MD
Frank D. Fazzina	Br. 34	Boston, MA
Gary D. Ferdelman	Br. 434	Ann Arbor, MI
Kenneth D. Kwolek	Br. 1	Detroit, MI
Theodore W. Robinson	Br. 2555	E. Lansing, MI
Robert W. Conibear	Br. 320	N. Oakland Co., MI
Cathy L. Paul	Br. 320	N. Oakland Co., MI
William A. Mayhew	Br. 717	Austin, MN
William F. Massmann	Br. 3283	Melrose, MN
Robert D. Landa	Br. 9	Minneapolis, MN
Harry J. Bealke	Br. 28	St. Paul, MN
Kevin G. Hevelone	Br. 8	Lincoln, NE
Margaret A. Romanic	Br. 67	Elizabeth, NJ
John J. Yavor	Br. 924	Freehold, NJ
John Carrigg	Br. 42	Jersey City, NJ
Gerald J. Dornan	Br. 42	Jersey City, NJ
Angelo C. Ingratta	Br. 42	Jersey City, NJ
Meyer Pollack	Br. 42	Jersey City, NJ
Quentin Q. Christian	Br. 38	NJ Mgd.
Christopher L. Hines	Br. 38	NJ Mgd.
Gary A. Travers	Br. 38	NJ Mgd.
Jesse N. Duran Jr.	Br. 504	Albuquerque, NM
B. B. Campbell	Br. 29	Albany, NY
William D. Matthews	Br. 29	Albany, NY
Robert Robinson	Br. 29	Albany, NY
Andrew T. Treglio	Br. 41	Brooklyn, NY
Zhong M. Wang	Br. 41	Brooklyn, NY
J. A. Howland	Br. 21	Elmira, NY
Carmine F. Masi	Br. 36	New York, NY
Frank S. Pullara	Br. 36	New York, NY
C. E. Frost	Br. 134	Syracuse, NY
Henry L. Goldacker	Br. 134	Syracuse, NY
Lee D. Morrow	Br. 2262	Burlington, NC
Warren R. Brey	Br. 1152	Minot, ND
Richard L. Brady	Br. 182	Dayton, OH
Harold W. Pickens	Br. 458	Oklahoma City, OK
Jimmy L. Wilson	Br. 458	Oklahoma City, OK
Brian P. Nemecek	Br. 82	Portland, OR
Gail R. King	Br. 284	Erie, PA
Robert W. Gulla	Br. 4973	Levittown, PA
Barney H. Seaton	Br. 84	Pittsburgh, PA
Eugene T. Gates Jr.	Br. 132	Dallas, TX
Brittany N. Mayfield	Br. 283	Houston, TX
Carlos R. Martinez	Br. 354	Laredo, TX
Eric N. Graham	Br. 111	Salt Lake City, UT
Deborah J. Hubbard	Br. 325	Lynchburg, VA
Harold A. Bell Jr.	Br. 3520	Northern VA
Herman L. Graham	Br. 496	Richmond, VA
William J. Vild	Br. 247	Tidewater, VA
Michael A. Jane	Br. 853	Aberdeen, WA
Lyle M. Norquist	Br. 728	Eau Claire, WI
Frank L. Gruener Jr.	Br. 2	Milwaukee, WI
Virgil A. McCullough	Br. 463	Laramie, WY

Letter carrier rights during an investigation

From time to time, letter carriers may be required to participate in different types of investigations conducted either by Postal Service management, agents of the USPS Inspection Service, or agents of the USPS Office of Inspector General. Exercising the right to union representation during an investigatory interview is one of the most important ways letter carriers can protect themselves during an investigation. This month's Contract Talk will explain this right, as well as the different types of warnings letter carriers might receive when they are questioned during an investigation.

The rights to representation during an investigatory interview, known as Weingarten Rights, were established by the Supreme Court in the landmark case *NLRB v. J. Weingarten, U.S. Supreme Court, 1975*. These rights are applicable regardless of which entity is conducting the investigation. There are a few things letter carriers should keep in mind regarding Weingarten Rights and when they apply.

First, Weingarten Rights apply only when the employee reasonably believes that discipline could result from the investigatory interview. Whether or not an employee's belief is reasonable depends on the circumstances of each case. Second, they do not apply when management calls in a carrier for the purpose of issuing disciplinary action. Letter carriers who are issued a written disciplinary notice should request to speak to a shop steward immediately upon receiving the discipline.

Additionally, only the employee can invoke these rights; the shop steward cannot exercise these rights on an employee's behalf. There is no legal requirement placed on the Postal Service to inform employees of their Weingarten Rights. If letter carriers believe that discipline could result from an interview, they should read the following statement before the meeting starts:

> If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I respectfully request that my union representative, officer, or steward be present at this meeting. Without my union representative present, I respectfully choose not to answer any questions or participate in this discussion.

Once a steward has been provided, letter carriers have the right to a pre-interview consultation with their representative before being interviewed by management. This right also is available in interviews with postal inspectors or OIG agents. The steward will provide the carrier with guidance in the pre-interview consultation and also will take an active role during questioning. Finally, Weingarten Rights allow the shop steward to be an active participant in the meeting. It would be a violation of these rights if management instructed the shop steward to remain silent during the interview.

Since Section 665.3 of the *Employee and Labor Relations Manual (ELM)* requires all postal employees to cooperate with postal investigations, the Postal Service may take disciplinary action against employees if they fail to cooperate during a normal investigatory interview that does not cross the threshold into a criminal investigation. This would appear to put the employee in an impossible position. Should an employee answer questions even if the answers may result in criminal charges, or should the employee refuse to answer, risking the possibility of discipline for "failure to cooperate" in an investigation?

If letter carriers are asked to participate in interviews or questioning conducted by the Postal Inspection Service or the OIG, there are additional rights and warnings that help to resolve these impossible situations. Postal inspectors and OIG agents are federal law enforcement officers and have the authority to investigate incidents—and the power to arrest—where criminal prosecution may result.

Under Article 17, Section 3 of the National Agreement, letter carriers have the right to be accompanied by a shop steward or union representative when being questioned by the Inspection Service. Article 17, Section 3 states in pertinent part:

> If an employee requests a steward or Union representative to be present during the course of an interrogation by the Inspection Service, such request will be granted.

When being interviewed by agents of the Inspection Service or the Office of the Inspector General, letter carriers may receive one of three warnings. Because these agents are law enforcement officers, the law requires them to give either a Garrity, Kalkines or Miranda warning. These warnings are generally given when an agency is investigating a criminal matter, so employees who receive one should take the matter very seriously. If the warning is given in writing, the letter carrier should carefully read what is written before signing the form.

The Garrity warning does afford the letter carrier the right to remain silent, but also allows federal law enforcement officers to use statements provided by suspects in both administrative and criminal investigations.

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Letter carrier rights during an investigation (continued)

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An example of a Garrity warning may read like this:

> You are being asked to provide information as part of an internal and/or administrative investigation. This is a voluntary interview and you do not have to answer questions if your answers would tend to implicate you in a crime. No disciplinary action will be taken against you solely for refusing to answer questions. However, the evidentiary value of your silence may be considered in administrative proceedings as part of the facts surrounding your case. Any statement you do choose to provide may be used as evidence in criminal and/or administrative proceedings.

The Kalkines warning explains that a letter carrier is required to make statements and cooperate, even if it could lead to disciplinary action or discharge. This warning does, however, provide criminal immunity for any statements given.

The exact wording of a Kalkines warning may vary slightly, however, an example could read something like:

> You are being questioned as part of an internal and/or administrative investigation. You will be asked several specific questions concerning your official duties, and you must answer these questions to the best of your ability. Failure to answer completely and truthfully may result in disciplinary action, including dismissal. Your answers and any information derived from them may be used against you in administrative proceedings. However, neither your answers nor any information derived from them may be used against you in criminal proceedings, except if you knowingly and willfully make false statements.

The most well-known warning is Miranda. Most people are familiar with this warning from watching crime programs on television. The Miranda warning is:

> You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to have an attorney present before any questioning. If you cannot afford an attorney, one will be appointed to represent you before any questioning.

Once a Miranda warning is given, anything letter carriers say can be used in a court of law to try to prove their guilt. If you are given this warning, you should consult with an attorney before answering any questions. Postal inspectors and OIG agents often present a PS Form 1067, Warning and Waiver of Rights and request that employees sign it. By signing this form, postal employees waive their Miranda Rights. Letter carriers should not sign PS Form 1067 without first consulting with an attorney. If you do sign a PS Form 1067, anything said from that point forward can be used against you in a court of law.

If letter carriers are given any of these warnings, and there is reason to believe that the carriers may be subject to criminal prosecution, they should immediately consult with an attorney in addition to exercising the right to have a steward present under the Weingarten rule.

For more information on Weingarten Rights and the warnings mentioned above, please see the 2023 *Letter Carrier Resource Guide* on the NALC website or contact your shop steward or branch officer.

Mutual Exchanges

CA: Carmichael (3/97) to Valley Center, Escondido, CA or surrounding areas. Carrier since 1997. Seeking mutual exchange. Deliveries in Carmichael. Lisa, 916-425-6153 or crazi_kalisz@yahoo.com.

FL: Miami Gardens (9/17) to Fort Lauderdale or Broward County, FL. Seeking mutual exchange. Robert, 808-392-8798 (call or text) or rbt_lopez @ yahoo.com.

FL: Tarpon Springs (12/00) to Atlanta, GA or surrounding areas. Tarpon Springs and Holiday with 27 city routes. Mostly curbside. Jim, 727-808-7645 or richjim3@verizon.net.

PA: Pittsburgh (5/19) to Phoenix, AZ or surrounding area. Timothy, 717-439-0063 (text or call) or 24ktlg@gmail.com.

How to place a Mutual Exchange ad

The cost of Mutual Exchange ads is $15 for up to 30 words and $25 for 31-50 words per month. Ads must be received by the 5th of the month preceding the month in which the ad will appear (e.g., October's deadline is for the November publication). Mail ad with check (payable to NALC) to: Mutual Exchange Ads, Postal Record, 100 Indiana Ave. NW, Washington, DC 20001-2144.

Ads are published for NALC members only. A branch officer or steward must endorse the ad to certify membership. Include your name, address and branch number. Begin each ad with your state abbreviation, city and seniority date.

Specific route information or mention of three-way transfers will not be published, nor any wording that offers cash or property to facilitate an exchange. Mutual exchanges must be approved by both postmasters involved. Seniority of carriers involved shall be governed by Article 41, Sec. 2E of the National Agreement. Carriers may not exchange assignments, since vacated positions must be posted for bids in accordance with local and national agreements.

Overtime and pay during December

The rules governing the payment of penalty overtime are found in Article 8 of the National Agreement. The rate of pay for penalty overtime is governed by the provisions of Article 8, Section 4.C, which states in pertinent part:

> C. Penalty overtime pay is to be paid at the rate of two (2) times the base hourly straight time rate.

While this provision applies to all letter carriers, determining when the penalty overtime rate is applicable depends on the classification of the employee.

This month's Contract Talk will address the payment of penalty overtime and some exceptions to these rules that occur in the month of December. It will also discuss the assignment of overtime during December.

The entitlement to penalty overtime for full-time regular and full-time flexible employees is found in Article 8, Section 4.D. of the National Agreement, which states:

> D. Penalty overtime pay will be paid to full-time regular employees for any overtime work in contravention of the restrictions in Section 5.F.

Article 8, Section 5.F states:

> F. Excluding December, no full-time regular employee will be required to work overtime on more than four (4) of the employee's five (5) scheduled days in a service week or work over ten (10) hours on a regularly scheduled day, over eight (8) hours on a non-scheduled day, or over six (6) days in a service week.

The explanation for this section is found on page 8-17 of the 2022 *Joint Contract Administration Manual (JCAM),* which states:

> Article 8.5.F applies to both full-time regular and full-time flexible employees. The only two exceptions to the work hour limits provided for in this section are for all full-time employees during the penalty overtime exclusion period (December) and for full-time employees on the ODL during any month of the year (Article 8.5.G). Both work and paid leave hours are considered "work" for the purposes of the administration of Article 8.5.F and 8.5.G.

The rules governing how part-time flexible (PTF) and city carrier assistant (CCA) letter carriers receive penalty overtime pay are found in Article 8, Section 4.E, which states:

> E. Excluding December, part-time flexible employees will receive penalty overtime pay for all work in excess of ten (10) hours in a service day or fifty-six (56) hours in a service week.
>
> (The preceding paragraph, Article 8.4.E., shall apply to City Carrier Assistant Employees.)

This language requires the payment of penalty overtime to PTF and CCA letter carriers for all work in excess of 10 hours in a service day or 56 hours in a service week. Part-time regulars are in the same category as part-time flexibles for penalty overtime purposes.

When determining the entitlement to penalty overtime pay, both the actual hours worked and any paid leave hours are counted. This is explained on page 8-3 of the 2022 *JCAM,* which states:

> All bargaining unit employees are paid postal overtime for time spent in a pay status in excess of 8 hours in a service day and/or in excess of 40 hours in a service week. Hours in pay status include hours of actual work and hours of paid leave.

The first exception to these rules, which affects full-time, part-time and CCA letter carriers, involves the payment of penalty overtime during the month of December. In accordance with Article 8, Section 4.C, penalty overtime will not be paid for any hours worked in December. This is commonly referred to as the penalty overtime exclusion period.

Although Article 8, Sections 4 and 5 identify the month of December, in 1985 the national parties agreed that the month of December referenced in these sections is understood to mean four consecutive service weeks, rather than the entire month (M-01508 in NALC's Materials Reference System). The specific period is published each year in the *Postal Bulletin* and *The Postal Record.* The penalty overtime exclusion period for calendar year 2023 will begin pay period 26-2023, week 1 (Dec. 2) and end pay period 01-2024, week 2 (Dec. 29).

The second exception during December pertains to the daily and weekly work-hour limitations. Article 8, Section 5.G provides that full-time employees on the Overtime Desired List (ODL) or Work Assignment List (WAL) may be required to work up to 12 hours in a day or 60 hours in a service week. However, these work limits do not apply to ODL and WAL letter carriers during the penalty overtime exclusion period. Management may, but is not required to, assign ODL carriers to work in excess of the 12- and 60-hour limitations during the penalty overtime exclusionary period.

The maximum hours allowed for PTFs, CCAs and full-time employees not on the ODL or WAL are not governed by the provisions of Article 8, Section 5.G. The rules defining the maximum number of work hours for these letter carriers are found in section 432.32 of the *Employee and Labor Relations Manual (ELM),* which states:

> Except as designated in labor agreements for bargaining unit employees or in emergency situations as determined by the postmaster general (or designee), employees may not be required to work more than 12 hours in 1 service day. In ad-

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Overtime and pay (continued)

(Continued from previous page)

dition, the total hours of daily service, including scheduled workhours, overtime, and mealtime, may not be extended over a period longer than 12 consecutive hours. Postmasters and exempt employees are excluded from these provisions.

The Step 4 settlement (M-01272) in case number E94N-4E-C96061540 dated Feb. 25, 1998, clarifies that the 12-hour limit established by *ELM* 432.32 continues to apply even during the penalty overtime exclusion period.

Similar to the previous reference that paid leave counts toward overtime, the 2022 *JCAM*, on page 8-19, explains that the 12- and 60-hour limitations are inclusive of all hours, including any type of leave taken.

The third exception during December pertains to letter carriers on the WAL. As stated above, excluding December, WAL carriers are available to work up to 12 hours in a day or 60 hours in a service week. Outside of the penalty overtime exclusion period, management has the right to assign an employee on the ODL to work regular overtime to avoid paying penalty overtime to a carrier on the WAL. This can limit a carrier on the WAL to 10 hours in a service day, even if additional overtime was available on their bid assignment. This is explained on page 8-21 of the 2022 *JCAM*, which states:

> Management may assign an employee from the regular ODL to work regular overtime to avoid paying penalty pay to a carrier who has signed for Work Assignment overtime. This exception does not apply during the penalty overtime exclusion period (December) when penalty overtime is not paid.

During the penalty overtime exclusion period, the carrier on the WAL has the right to work the additional time over 10 hours, since penalty overtime is not paid. Keep in mind, this exception applies only when management wants to assign a carrier from ODL to work the overtime. Management still retains the right to utilize a letter carrier at the straight-time rate or a PTF or CCA at the straight-time or overtime rate prior to assigning additional overtime to a carrier on the WAL. The explanation for this provision is found on pages 8-20 and 8-21 of the 2022 *JCAM*, which states:

> Management may always assign another carrier to perform the work at the straight-time rate rather than assigning overtime to a carrier on the Work Assignment List. Management may also assign PTFs and CCAs at the straight-time or overtime rate (up to the ELM limitations).

If you have any questions related to these or other Article 8 provisions, contact your local shop steward or branch officer. Complete copies of the "M" documents referenced in this article and the 2022 *JCAM* are available on the NALC website at nalc.org.

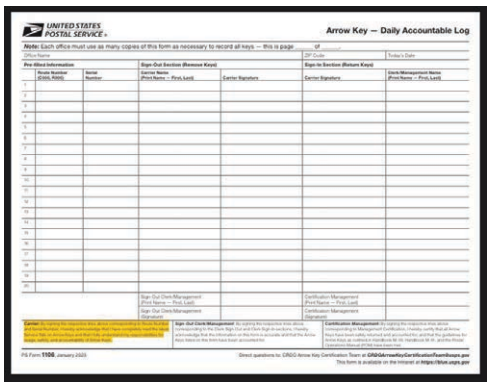
Director of City Delivery

MDD-TR translator and more (continued)

(Continued from page 76)

with postal handbooks and manuals. As of the writing of this article, the meeting has not taken place. I will continue to work toward a resolution for these issues. I encourage any member who receives instructions related to this process that violates the language above of the *M-41* to inform your local union representative and **file a grievance**.

Additionally, USPS has provided guidance under this process advising the use of PS Form 1106 to clear carriers of Arrow Key accountability. PS Form 1106 has been rescinded by the Postal Service since March 23, 2023. The use of this form should be brought to the attention of local union representatives to investigate.


UNITED STATES POSTAL SERVICE

Arrow Key — Daily Accountable Log

PS Form 1106

Finally, I want to thank the carriers in the Falls Church Post Office for their time and helpful insight into their experience with the translator application on the MDD-TR. I will update the membership on these subjects once we have an opportunity to meet with the Postal Service and discuss all available information.

Contract Administration Unit
Paul Barner, Executive Vice President
James D. Henry, Vice President
Christopher Jackson, Director of City Delivery
Manuel L. Peralta Jr., Director of Safety and Health
Dan Toth, Director of Retired Members
Jim Yates, Director of Life Insurance

Retirement processing issues

The Office of Personnel Management (OPM) administers the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS). OPM is the federal agency that has authority to decide all matters regarding CSRS and FERS retirements. OPM determines whether a letter carrier is eligible to retire, how much the carrier will receive in retirement, and deals with a host of related issues. OPM has its own internal appeals system that is available when a retiree believes an OPM decision is wrong. Since OPM is a separate federal agency and not a party to the collective-bargaining agreement between the USPS and NALC, no decision, action or lack of action by OPM can be challenged using the grievance procedure.

However, OPM requires employees to apply for retirement through their own federal agency, including the Postal Service. Likewise, OPM requires the Postal Service to process the retirement applications of employees. The OPM regulations regarding the processing of retirement applications of employees by agencies are complex. Many of those regulations are explained in OPM's *CSRS-FERS Handbook*, which is available online at opm.gov.

The regulations pertaining to retirement within the Postal Service are found in the *Employee and Labor Relations Manual (ELM)*. Section 560 of the *ELM* explains the process for employees covered under CSRS, while Section 580 describes the rules for those covered by FERS. These sections of the *ELM* reflect many of OPM's regulations regarding retirement applications. If there is an apparent conflict between OPM regulations or policies and the Postal Service *ELM* provisions regarding the processing of retirement applications, OPM's regulations control. Section 581.2 of the *ELM* states:

> OPM administers the basic portion of FERS. The FERS laws, policies, and regulations issued by OPM, including those governing employee eligibility and benefits, are controlling in the event of conflict with the information contained in this subchapter.

Article 21, Section 3 of the National Agreement incorporates the provisions of CSRS under 5 United States Code (USC) 83 and FERS under 5 USC 84. It follows that Postal Service violations of OPM regulations, *ELM* provisions, Step 4 settlements, etc., regarding retirement processing issues can be addressed through the grievance-arbitration procedure, provided the grievant is a current employee at the time of filing[1].

One retirement application processing issue seems to be widespread. It has to do with the Certified Summary of Federal Service (CSoFS) form. For FERS employees, it is Standard Form 3107-1, and for CSRS employees it is SF 2801-1. The CSoFS is the form that agencies use to certify to OPM the dates of the retiring employee's creditable service, which includes career service and may also include creditable non-career, military and part-time service, etc. This is a critical form, because both an employee's eligibility to retire, as well as the amount of their annuity, are based on the total years and months of service.

Here is what OPM's *CSRS FERS Handbook*, Section 40A3.1-1B says about the form:

> B. CSRS Forms To Be Completed by Agency
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> The personnel office must:
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> Prepare a Certified Summary of Federal Service (SF 2801-1) that lists the employee's verified Federal civilian and military service.
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> NOTE: The employee should review and sign the Certified Summary of Federal Service. However, if the employee is unable to sign the Certified Summary, the agency may submit the form to OPM without the employee's signature.

Section 40A3.1-1.D goes on to clarify that CSoFS for FERS employees uses a different form number.

> D. FERS Forms To Be Completed by Agency
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> The forms to be completed by the personnel office in the case of a FERS employee are the same as those used for a CSRS employee (see paragraph B), with the following exceptions:
>
> The Certified Summary of Federal Service is SF 3107-1;

The instructions on the form itself are also clear. The first set of instructions on the form pertains to information for the agency. Item No. 1 requires a certified copy of the form to accompany the employee's application for retirement. The second set of instructions is to be completed by the employee. The instructions state:

1. Your employing office will complete and certify this form for you.
2. Review this form carefully. Be sure it contains all of your service.

1 As a general matter, non-employees, including retirees, do not have standing to initiate grievances. A major exception to this general rule is Memorandum of Understanding Re: Debts of Retired Employees found on page 217 of the National Agreement.

3. Complete Section E, Employee's Certification, and return the form to your employing office.

Section D of the form includes a line for a signature by an official from the employing agency certifying that the service history information on the form accurately reflects official agency personnel and/or payroll records. Section E of the form is titled "Employee's Certification" and includes a line for the employee's signature.

The service histories of most employees are relatively straightforward, with a beginning date of career service through the anticipated retirement date. But other employees may have made a deposit for military or non-career civilian service; accumulated more than six months of leave without pay (LWOP) in a calendar year; or have more than two months of aggregate LWOP due to an accepted on-the-job injury. These scenarios make reviewing and certifying the service history even more important as they are more prone to error and are vital in making fully informed retirement decisions.

Despite the clear guidance and form instructions, the Postal Service retirement counselors at the Human Resources Shared Service Center (HRSSC) routinely provide blank forms to retiring employees, without any service history information. Some retiring employees have been told that they should sign the blank form and that the form would be filled out later by the Postal Service. No employee can reasonably be required to sign a document certifying that the information provided by the Postal Service on the document is accurate when there is no information provided on the document. Employees who do not trust the Postal Service to certify the correct service should request the form be completed so that it can be reviewed in accordance with the instructions provided by OPM. Those who choose to submit a blank form can do so, without a signature, and it should not delay your retirement.

Insistence by HRSSC counselors that retiring employees sign a blank CSoFS should be challenged, through the grievance procedure, if necessary, as this is contrary to the provisions set forth by OPM.

Employees who are denied a completed form can consider asking their shop steward to investigate (remember that any grievance must be initiated prior to separation) and then submit the application with the blank, unsigned, CSoFS. Employees should not have to delay their retirement due to retirement-processing issues by the Postal Service.

The consideration of the proper remedy in such a case is very important. In addition to a cease-and-desist to protect future retirees, an important remedy to include during a retirement processing grievance is compelling the Postal Service to re-certify to OPM the employee's service history, if it did not do so correctly in the first place. This is because OPM will rely solely on the service history provided by the Postal Service. It generally will not consider employee statements and documentation. The best way to fix such a situation is to have the Postal Service re-certify the correct service history.

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This can become complicated as the grievance would be filed prior to the employee's separation, but if the Postal Service initially refused to complete the CSoFS and the employee retired without it, the Postal Service doesn't complete the form until a later date, post-separation. This creates a situation where the CSoFS cannot be reviewed when a grievance is initiated. A mutual agreement to extend the time limits of the grievance, such that the CSoFS can be properly reviewed for accuracy, can be an efficient method to either correct the issue or to ensure that the proper remedy is included. Grievances that are advanced to the next step prior to review of the CSoFS should be sure to include a remedy that provides for re-certification of the form as necessary.

Retirement is a critical benefit that letter carriers have earned through their years, if not decades, of service. Mistakes by the Postal Service when processing retirement forms have a substantial financial impact on retirees. Shop stewards and branch officers play an important role in ensuring that letter carriers are provided with the benefits to which retiring employees are entitled under the law.