

Using handbooks and manuals to your advantage

Did management violate...? Did management have just cause to...? Isn't that how most grievance issue statements are framed?

The issue statement is a question, posed by the union, to ask if management has acted correctly within the four corners of the National Agreement—the decision and remedy is the answer to that question. As an effective shop steward, it isn't enough to simply ask the question. Your job is to ask the question, investigate the facts in question, and attempt to resolve the conflict.

Asking the question and sometimes determining the resolution is much easier than investigating the facts. What happens when the words in the contract don't exactly match what you see as the violation? For example, your office has just seen yet another overtime violation. Clearly, there was an overtime violation; what is the issue? You believe staffing is the root cause of the violation—if you had a full complement of carriers on board, there wouldn't be any overtime violations. Staffing, however, isn't addressed directly in the printed contract; how is it enforceable? While staffing complement isn't mentioned by name, it is most certainly covered by the contract.

One of the Postal Service handbooks, *EL-312*, has specific references to staffing and who is responsible to ensure staffing. Article 19—*Handbooks and Manuals*—is the contractual connection between your dispute and the issue. As such, Article 19 stipulates:

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement...

Never neglect to use this valuable direct extension of the contract. In the example above, *Handbook EL-312, Employment and Placement Handbook* says:

Section 124: The District Manager of Human Resources is responsible for...

C) Planning and conducting appropriate ongoing recruitment efforts to meet local needs

D) Planning, opening, announcing, and publicizing examinations for recruitment to meet staffing needs of the district

Section 211.1 Forecasting—The installation head is responsible for forecasting the recruitment requirements in the installation in sufficient time to assure that there are qualified persons available for appointment. While the installation head is responsible for forecasting recruitment needs, local management *from all organizational functions must work together in assessing how changing operational needs will affect recruitment needs* (emphasis added).


As you investigate your overtime grievance, request the documents related to planning, ongoing recruitment, examinations and forecasting. The documents you acquire related to the handbooks and manuals may well prove to be a goldmine in answering questions posed in the issue statement.

Article 19 only opens the door for union activists to walk through while investigating and proving a violation of the contract.

While not an exhaustive list of applicable handbooks and manuals at your disposal, take the time to review these additional handbooks and manuals covered by Article 19:

- *Employee and Labor Relations Manual (ELM)*
- *M-39 Management of Delivery Services*
- *M-41 City Delivery Carriers Duties and Responsibilities*
- *Administrative Support Manual (ASM)*
- *Postal Operations Manual (POM)*
- *EL-307 Reasonable Accommodation*
- *EL-505 Injury Compensation*
- *F-21 Time and Attendance*

These handbooks and manuals are available at www.nalc.org/depart/cau/manual.html.

Did management violate... a handbook or manual? Be sure to use every tool and resource available to you to answer the question. 

TE Questions and Answers

The “Questions and Answers” below constitute the document jointly agreed upon by the NALC and the Postal Service regarding Transitional Employees in the letter carrier craft. These 27 questions and answers are the only source of the parties’ joint agreement at the headquarters level. The document will be updated as agreement is reached on other issues. In addition to appearing here and being distributed to the field, “Questions and Answers (27), NALC Transitional Employees” is available online at nalc.org as document M-01633 in the Materials Reference System section of the Contract Administration page.

1. When may Transitional Employees be hired under the terms of the 2006 National Agreement?

Transitional Employees may be hired after the National Agreement was ratified (September 11, 2007) under either the provisions of Article 7 or the Memorandum of Understanding, RE: Transitional Employees (Flat Sequencing System), provided that the national and district caps are not exceeded.

2. In determining the NALC TE caps are the number of employees “rounded up” for percentage purposes?

No. Under Article 7.1.B of the 2006 National Agreement the number of Transitional Employees shall not exceed 3.5 percent of the total number of on-rolls career city carriers nationwide, and may not exceed 6 percent of the total number of career city carriers employed in the district. Regarding FSS Transitional Employees the number shall not exceed 8 percent of the authorized city carrier complement for the district.

3. The Memorandum of Understanding Re: Transitional Employees (Flat Sequencing System) includes the following requirement: “In any district, the number of these TEs shall not exceed 8 percent of the authorized city carrier complement for that district.” What is the authorized city carrier complement for a district?

For the purposes of defining the subject Memorandum, “authorized city carrier complement for that district” means the number of on-rolls career city carriers employed in the district.


4. How will Transitional Employee caps be monitored for compliance?

The caps will be monitored at the national level. The Postal Service will provide the national union with separate reports for each type of Transitional Employee (Article 7.1 and FSS MOU). These reports will be provided to the national union every other pay period and will identify both nationally and by district the number of Transitional Employees and percentage compared to career letter carriers on rolls.

5. What are the occupational codes and designation activity codes for Transitional Employees?

Transitional Employee occupational codes are as follows: Transitional Employees employed under Article 7.1.B of the National Agreement are either 2310-0030 City Carrier (Transitional Employee) CC-01 or 2310-0040 Carrier Tech (Transitional Employee) CC-02. Transitional Employees employed under the Memorandum of Understanding, Re: Transitional Employees (Flat Sequencing System) are either 2310-0031 City Carrier (Transitional Empl-MOU) CC-01 or 2310-0041 Carrier Tech (Transitional Empl-MOU) CC-02. The designation activity code for all city letter carrier Transitional Employees is 834.

6. Are Transitional Employees employed under the Memorandum of Understanding, Re: Transitional Employees (Flat Sequencing System) limited to sites directly impacted by FSS?

No, but the number of this type of Transitional Employee is limited to 8,000 nationwide through the duration of all phases of Flat Sequencing System (FSS) implementation. In any district, the number of these TEs shall not exceed 8 percent of the authorized city carrier complement for that district. 

7. If casuals are “converted” to Transitional Employees, must they have an immediate break in service?

Yes, the casual must have at least a five day break in service prior to being appointed as a Transitional Employee.

8. May city letter carrier Transitional Employees be assigned to work in other crafts?

Only under emergency conditions, as defined by Article 3 of applicable collective bargaining agreements.

9. Is there a limit on the number of hours Transitional Employees may be scheduled on a workday?

Yes, Transitional Employees are covered by Section 432.32 of the *Employee and Labor Relations Manual*, which states:

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. Postmasters, Postal Inspectors, and exempt employees are excluded from these provisions.

10. Do Transitional Employees have a work hour guarantee?

Yes, Article 8, Section 8.D of the National Agreement provides the following: “*Any transitional employee who is scheduled to work and who reports for work shall be guaranteed four (4) hours’ work or pay.*”

11. Are Transitional Employees covered by leave provisions of Articles 10 and 30 of the National Agreement?

No. The granting of annual leave to Transitional Employees is covered by the Memorandum of Understanding, Re: *Transitional Employees—Additional Provisions*.

12. May Transitional Employees carry over leave from one appointment to another?

No. Transitional Employees may be paid for any accrued leave pursuant to the Memorandum of Understanding, Re: *Transitional Employees—Additional Provisions*.

13. Are Transitional Employees covered by the Memorandum of Understanding, Re: Bereavement Leave?

Yes, except that they do not earn sick leave.

14. Does a Transitional Employee who receives a career appointment go through a probationary period as a career employee?

Yes.

15. Does the Memorandum of Understanding, Re: Transfers, still apply?

Yes, the Transfer Memorandum was not altered by either the revision to Article 7.1 of the National Agreement or the Memorandum of Understanding, Re: *Transitional Employees (Flat Sequencing System)*. Accordingly, unless hiring Transitional Employees to fill or backfill for residual assignments being withheld pursuant to Article 12 of the National Agreement, the “at least one in four” or “at least one in six” rules for reassignments remain in effect when hiring.

16. Will Transitional Employees have access to the grievance procedure if removed?

Yes, consistent with the Memorandum of Understanding, Re: *Transitional Employees—Additional Provisions*, which states:

Transitional employees may be separated at any time upon completion of their assignment or for lack of work. Such separation is not grievable except where the separation is pretextual. Transitional employees may otherwise be removed for just cause and any such removal will be subject to the grievance-arbitration procedure, provided the employee has completed ninety (90) work days, or has been employed for 120 calendar days, whichever comes first. Further, in any such grievance, the concept of progressive discipline will not apply. The issue will be whether the employee is guilty of the charge against him or her. Where the employee is found guilty, the arbitrator shall not have the authority to modify the discharge. In the case of removal for cause, a transitional employee shall be entitled to advance written notice of the charges against him/her in accordance with the provisions of Article 16 of the National Agreement.

17. Can a Transitional Employee serve as a union steward?

Yes.

18. Will the union be allowed to address Transitional

Employees during new employee orientation?

Yes. The provisions of Article 17.6 of the National Agreement apply to Transitional Employees. Accordingly, the union is to be provided ample opportunity to address newly hired city carrier Transitional Employees during orientation. This rule applies to city carrier casuals who are appointed to Transitional Employee positions.

19. Are Transitional Employees allowed to participate in the Federal Employees Health Benefits Program?

The Memorandum of Understanding, Re: Transitional Employees—Additional Provisions, provides the following:

“After an initial appointment for a 360-day term and upon reappointment to another 360-day term, any eligible noncareer transitional employee who wants to pay health premiums to participate in the Federal Employees Health Benefits (FEHB) Program on a pre-tax basis will be required to make an election to do so in accordance with applicable procedures. The total cost of health insurance is the responsibility of the noncareer transitional employee.”

20. To qualify for Health Benefits, must a Transitional Employee serve the entire 360 day initial appointment before a second 360 day appointment?

Yes. Transitional Employees must serve the initial 360 day appointment and be appointed to a second 360 day appointment in order to be eligible to enroll in the Federal Employee Health Benefits Program.

21. Are Transitional Employees entitled to higher level pay under Article 25 of the National Agreement?

No. Article 25 does not apply to Transitional Employees. However, Article 9.7 of the National Agreement requires that Transitional Employees be paid at Step A of the position to which assigned. Accordingly, if a Transitional Employee is assigned to a vacant Carrier Technician position, the employee will be paid at Step A of CC-02.

22. May Transitional Employees be assigned to vacant duty assignments?

Yes, consistent with the following: The posting and bidding provisions of Article 41.1.A and the opting provisions of Article 41.2.B, and provisions of Article 25 for temporarily filling higher level vacancies still apply. However, Transitional Employees may be assigned to cover residual or temporary vacancies not filled through those procedures.

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23. Will Transitional Employees be allowed to opt on vacant duty assignments?

No.

24. May a Transitional Employee be assigned to a residual vacancy rather than converting an available part-time flexible city letter carrier to full-time?

Unless the residual vacancy is being withheld pursuant to Article 12 of the National Agreement, the assignment should normally be filled pursuant to Section 722 of *Handbook EL-312*, which states:

“A full-time residual position is filled by assigning an unassigned full-time employee or a full-time flexible employee. The conversion to full-time of a qualified part-time flexible employee with the same designation or occupation code as the vacancy should occur only after unassigned full-time employees have been assigned. Part-time flexible employees must be changed to full-time regular positions, if appropriate, within the installation in the order specified by the applicable collective bargaining agreement.”

25. Will city carrier Transitional Employees attend the carrier academy?

Newly hired Transitional Employees will attend the carrier academy if it is part of the hiring and training process used in the district, provided the employee did not previously attend the training. This also applies to the classroom portion of the training for city carrier casuals who are appointed to Transitional Employee positions.

26. Can a Transitional Employee act as a temporary supervisor (204-B)?

Yes.

27. Will Transitional Employees be assigned an Employee Identification Number and a PIN?

Yes.



Stewards' Weingarten rights in investigative interviews upheld

“ need to see you in the office!” Those words from a supervisor have struck fear into the heart of more than one letter carrier. In your mind you are thinking, “What now?” “Here we go again,” or “What did I do?” Regardless of the reason, you should always be ready to ask the supervisor this simple question: “Can this lead to discipline?”

If the supervisor starts to ask questions about your work, your route, what you did on a specific day, or any number of questions which indicate they are investigating you, ask, “Can this lead to discipline?” and then say, “I want a steward.” If you believe you are being investigated for some infraction, you have the right to decline to answer any more questions until you have been provided with a steward.

This right to union representation is guaranteed to you through federal labor law, and is known as the Weingarten rule. This rule gives each employee the right to representation during any *investigatory interview which he or she believes may lead to discipline* (*NLRB v. J. Weingarten*, U.S. Supreme Court, 1975).

Weingarten only applies to investigatory interviews—when a supervisor is searching for facts to determine an employee’s guilt or whether to issue discipline. Weingarten does not apply to job discussions (Article 16.2) or fitness-for-duty examinations.

You must ask for a steward. A steward’s rights under Weingarten are absolute, but a steward cannot exercise those rights for you. Once a steward has been provided, you have the right to a private discussion with the steward before the interview continues. The steward has the right to be with you during an interview, whether with a supervisor, OIG agent or postal inspector.

What are the steward’s rights in an investigative interview? Many supervisors mistakenly believe a steward can only be a silent observer during an investigative interview. This belief is absolutely wrong. The *JCAM* states:

In a Weingarten interview the employee has the right to a steward’s assistance—not just a silent presence. The employer would violate the employee’s Weingarten rights if it refused to allow the representative to speak

or tried to restrict the steward to the role of a passive observer.


The *JCAM* was reinforced by a recent National Labor Relations Board decision involving a letter carrier. A steward may assist by asking questions, clarifying questions and answers and objecting to inappropriate questions. In a recent NLRB decision (*USPS and NALC Branch 753, AFL-CIO. Case 25-CA-29340*), a letter carrier was being investigated for alleged willful delay of DPS mail. A steward was provided and the carrier and steward were allowed time to consult and discuss the situation privately. However, during the interview the supervisor asked a leading and loaded question: “Are you aware of the penalty for willfully delaying the mail?” The steward objected and attempted to clarify the question. The supervisor instructed the steward not to interrupt and to allow the carrier to answer.

The steward correctly observed the potential trap the supervisor was laying before the carrier and tried to intervene. As the Board wrote:

Asking [the carrier] if [he] were aware of the penalty for willfully delaying the mail is much akin to the age-old loaded and misleading question “Are you still beating your wife?” Inasmuch as [the supervisor] acknowledged that if [the carrier] answered “yes,” she would have understood his response to mean...he had willfully delayed the mail. It is reasonable that [the steward] would have wanted to assist [the carrier] in responding to this potentially incriminating question.

The Board concluded:

By refusing to allow a union representative to participate and assist an employee during an investigatory interview [the Postal Service] violated Section 8(a)(1) of the Act.

While this recent NLRB decision does not plow new legal ground, it does reinforce the existing Weingarten provisions, which clearly give stewards the right to be active participants in investigative interviews. For a complete reading of this NLRB decision, you may find it in its entirety on the NALC website: [NALC>Departments>CAU>MRS>M-01668](#). 

Voluntary transfers

Article 12 of the National Agreement provides guidelines for employees who wish to request voluntary reassignments to other postal installations. Employees begin the process by submitting a written request for a voluntary transfer in accordance with Article 12.6 (Section 6—Transfers), which states in relevant part:

A. Installation heads will consider requests for transfers submitted by employees from other installations.

B. Providing a written request for a voluntary transfer has been submitted, a written acknowledgment shall be given in a timely manner.

Along with making written requests, employees are able to electronically request reassignment by using “eReassign” on the USPS liteblue.usps.gov website. The eReassign link can be found on the front page of liteblue and/or on the My Life tab. In both cases, employees who wish to utilize this feature will need to scroll down to the bottom of both pages and look for the link in the right-hand margin.

According to eReassign, employees can “submit a reassignment request via the Internet, view the status of your request, and view offices and positions within each district.” The eReassign web page also states that “eReassign is still experiencing some problems with the correct population of data. The information displayed in the Change in Eligibility message may be inaccurate. Please continue to verify eligibility before determining that an employee may be ineligible to transfer.” It is important to note that eReassign does not supersede, or replace, the right of an employee to submit a written request for a voluntary transfer.

Once a request for voluntary transfer has been received, the request must be processed in accordance with the Transfer Memorandum (*et al.*) found in the National Agreement (page 174) and the *JCAM* (pages 12-38 through 12-41). This memorandum provides in part:

Transfer Memo 1.B B: Installation heads will afford full consideration to all reassignment requests from employees in other geographical areas within the Postal Service. The requests will be considered in the order received consistent with the vacancies being filled and type of positions requested. Such requests from qualified employees, consistent with the provisions of this memorandum, will not be unreasonably denied.... Except in the most unusual of circumstances, if there are suf-

ficient qualified applicants for reassignment, management must comply with the following minimums:

- In all offices of 100 or more work-years, at least one out of every four vacancies will be filled by granting requests for reassignment.
- In all offices of less than 100 work-years, at least one out of every six vacancies during the duration of the National Agreement will be filled by granting requests for reassignment.


The process for handling voluntary transfer requests is pretty straightforward. However, some installation heads have been filling all vacancies with transitional employees rather than accepting any voluntary transfers. This issue has been recently addressed by the parties in “Questions and Answers (27), NALC Transitional Employees” (M-01633):

15. Does the Memorandum of Understanding Re: Transfers still apply?

Yes, the Transfer Memorandum was not altered by either the revision to Article 7.1. of the National Agreement or the Memorandum of Understanding Re: Transitional Employees (Flat Sequencing System). Accordingly, unless hiring Transitional Employees to fill or back fill for residual assignments being withheld pursuant to Article 12 of the National Agreement, the “at least one in four” or “at least one in six” rules for reassignments remain in effect when hiring.

Any employees who feel that they have been denied a voluntary transfer should contact the union steward as soon as possible. According to the *JCAM*, pages 12-38:

The denial of a transfer request is a grievable matter. When the denial of a transfer request is grieved, the disputed decision is by the Postmaster of another installation. Nevertheless, any grievances concerning the denial of a transfer request must be filed with the aggrieved employee’s immediate supervisor as required by Article 15.2. Arbitrators from one region have the authority to order Postmasters in another region to accept a transfer request.

For more information, please read the executive vice president’s column in the April issue of *The Postal Record*. In addition, mutual exchanges are addressed in Article 41 and the *Employee Labor Relations Manual*. See *JCAM* 41-17 for more information. 

Wages, hours or working conditions

Recently, much controversy has arisen over the use of handbooks and manuals as they apply under Article 19 of the National Agreement. In some cases around the country, management has at times taken the position that parts of or an entire handbook or manual are not covered under the provisions of Article 19. Article 19 clearly covers *all* provisions of handbooks and manuals containing language directly affecting the wages, hours or working conditions of letter carriers. Article 19 states in relevant part:

Article 19 shall apply in that those parts of all handbooks, manuals and published regulations of the Postal Service, which directly relate to wages, hours or working conditions shall apply....

Therefore, the union can rely on provisions from any handbook or manual as long as those provisions apply to wages, hours or working conditions. A shop steward's red flag should come up anytime management states that a particular handbook or manual is not covered by Article 19. In National Arbitration Case No. H1C-N-C-12 (C-21676), Arbitrator Richard Mittenthal reaffirms that position, stating:

The first paragraph of Article 19 deals with substantive matters. It expresses a series of principles as to how handbooks and manuals are to be treated under the National Agreement. These principles do not deal with every part of every handbook or manual. Nor do they cover every Postal Service employee. Rather, they concern only 'those parts of all handbooks, manuals, ...that directly relate to wages, hours, or working conditions' for the 'employees covered by this agreement.'

The *JCAM* explains the usefulness of Article 19 in applying various provisions from handbooks and manuals. The *JCAM* states in relevant part:

Handbooks and Manuals: Article 19 provides that those postal handbook and manual provisions directly relating to wages, hours, or working conditions are enforceable as though they were part of the National Agreement.

That brings us to the next question—how do you determine if a particular handbook or manual provision is applicable under Article 19? Wages is simple; anything that affects a letter carrier's pay falls under this category. For example, *ELM* 434.6 deals with Out of Schedule Pay. Management under Article 19 is required to adhere to

this provision when a regular letter carrier assignment is changed. If management fails to adhere to the cited provision, the union may challenge the improper pay.

The question of **hours** also is relatively simple. For example, Section 122.1 of the *M-39 Handbook* deals with establishing schedules. These provisions deal with how management establishes schedules, including starting times for letter carriers. The union may cite these provisions as controlling when it can show that management failed to adhere to them.

Lastly, the issue of **working conditions** can be a source of controversy. Remember, the language in Article 19 says that those provisions that "directly relate to wages, hours or working conditions" apply. The key words are *directly relate*.

When management claims that a provision in a handbook or manual is not covered by Article 19, a rebuttal argument must be raised. This means citing both the clear language in Article 19 along with that of the *JCAM*. As an example, in National Arbitration Case No. Q98N-4Q-C 01090839 (C-23261), Arbitrator Dennis R. Nolan grappled with the union's complaint that management improperly changed language in *Publication 71, Notice for Employees Requesting Leave for Conditions Covered by the Family and Medical Leave Act*. Management argued in that case that *Pub 71* was not covered by Article 19 and therefore the union could not challenge changes to the document. Arbitrator Nolan disagreed, stating:

Publication 71, in contrast, did not come with a disclaimer of regulator force. In fact, the Postal Service expressly declined at the arbitration hearing to stipulate that the document was not intended to change existing rules. Moreover, *Publication 71* goes to employees rather than just to their supervisors. It thus cannot be a simple 'internal management communication.' Finally, *Publication 71* contains specific directions that employees must follow in order to obtain FMLA leave. In sum, *Publication 71* clearly meets the normal definition of a regulation and is therefore subject to an Article 19 appeal.

If you are unclear or unsure of how to proceed with a grievance where management claims that (a) provision(s) or an entire handbook or manual are not covered by Article 19, seek guidance from your National Business Agent. ☒

Paid military leave

Paid military leave is an authorized absence from postal duties without loss of pay, time or performance rating, granted to eligible employees who are members of the National Guard or Reservists of the armed forces (*ELM 517.12*). Types of duty covered for members of the Reserves and National Guard, as paid military leave, include (*ELM 517.131*):

- **a.** Active duty, field and coast defense training.
- **b.** Scheduled drills.
- **c.** Service providing military aid for law enforcement purposes.

Types of duty covered for members of the D.C. National Guard, as paid military leave, include (*ELM 517.132*):

- **a.** Parade or encampment activities of the D.C. National Guard.
- **b.** Service providing military aid for law enforcement purposes.

Career postal employees, i.e., full-time, part-time regular, and part-time flexible employees who are members of the following components of the armed forces, are eligible for paid military leave (*ELM 517.21*):

- **a.** The Army National Guard of the United States
- **b.** The Army Reserve
- **c.** The Naval Reserve
- **d.** The Marine Corps Reserve
- **e.** The Air National Guard of the United States
- **f.** The Coast Guard Reserve
- **g.** The Air Force Reserve

Casual and transitional postal employees are not eligible for paid military leave. However, they are permitted to be absent from postal duties (*ELM 517.22*).

The employee is to complete a PS Form 3971 before the period of absence. If the employee does not learn of the need for the absence until later, notice is to be given as soon as possible. The official responsible for approving the attendance record also approves military leave. For paid military leave approval, upon return from military duty to the Postal Service, the employee furnishes a copy of military orders or other documentation properly en-

dorsed by appropriate military authority to show the duty was actually performed (*ELM 517.31, ELM 517.34*).

Eligible full-time and part-time employees receive credit for paid military leave as follows (*ELM 517.41*):

- **a.** Full-time employees other than D.C. National Guard—15 calendar days (120 hours) each *fiscal year*.
- **b.** Part-time employees other than D.C. National Guard—One hour of military leave for each 26 hours in pay status (including military LWOP) in the preceding fiscal year provided:
 - **1.** Employee was in pay status a minimum of 1,040 hours in the preceding fiscal year. **Note:** A part-time employee's time on military LWOP in one fiscal year counts toward meeting the 1,040 hours' requirement for the next fiscal year.
 - **2.** Employee's pay for military leave does not exceed 80 hours.
- **c.** D.C. National Guard—all days (no limit) of parade or encampment duty ordered under Title 49, District of Columbia Code.

Generally, an employee must be in pay status either immediately prior to the beginning of military duty or immediately after the end of military duty in order to be entitled to military leave with pay. The approving official determines whether (but for the active duty) the employee fulfills the pay status requirement (*ELM 517.51*).

Eligible employees who volunteer or are ordered for a period of military training or for a period of active military duty beyond the general military leave allowance may use annual leave or LWOP, at their option. Sick leave can be used only if the employee is hospitalized, confined to quarters as directed by competent military medical authorities, or on convalescent leave due to military service (*ELM 517.542*).

PS Form 3973, Military Leave Control, provides installations with an official record of the amount of military leave used. Timekeepers or other officials responsible for processing time cards maintain a file of PS Form 3973. The forms are retained for three years after the end of the pay period in which the leave was taken (*ELM 517.71*). ☒

Timeliness

Important note: The Dispute Resolution Process is designed to move grievances forward in a timely fashion and minimize the time needed to resolve the dispute by strictly adhering to the time limits set forth in Article 15. However, there are rare occasions, for instance, when waiting on requested information or waiting to interview someone, when it is necessary to delay moving a case forward within those time limits.

Is a handshake agreement as good as a written agreement?

It might be, but don't bet someone's job on it. This article is about the proper way to ensure your agreements are not misunderstood. Simply put, when you make an agreement with management, reduce it to writing.

What sort of agreements need to be in writing? Any time you make one as a union representative, you should confirm your "handshake" with a written document to memorialize it. For this article, we will be addressing one type of agreement: grievance time extensions.

First of all, can the parties agree to extend the time for moving a grievance forward? Yes:

Article 15, Section 2, Formal Step (c) The installation head or designee will meet with the...Union as expeditiously as possible, but no later than seven (7) days following receipt of the Joint Step A Grievance Form *unless the parties agree upon a later date* (emphasis added).

Article 15, Section 2, Formal Step (f) The Formal Step A decision is to be made and the Joint Step A Grievance Form completed the day of the meeting, *unless the time frame is mutually extended* (emphasis added).

If it is necessary to mutually extend the time for meeting or appealing a grievance to Formal Step A or B, you should be mindful to do it mutually, clearly, and in writing. Your written extension should identify who is making the extension, the date of the agreement, what grievance the extension applies to, how long the extension is in force, and signatures. It is absolutely essential that the parties who are agreeing to the extension have the authority to grant the extension. A copy of the extension agreement should be made for both signatories and the grievance file. The extension must be made a part of the grievance file.

While it is possible to extend the contractual time limits for appeal, be careful. There are reasons to extend the time frames, but without a clear record of the agreement, you are entering dangerous waters. Arbitrators often draw a very exacting line when management challenges the grievance was untimely.

Arbitrators are bound by the language of the *National Agreement*, which clearly states:

Article 15 Section 3. Grievance Procedure—General

B. The failure of the employee or the Union in Informal Step A, or the Union thereafter to meet the prescribed time limits of the Steps of this procedure, including arbitration, shall be considered as a waiver of the grievance.

The Supreme Court has expressed its opinion of the role of arbitrators in rendering decisions, and this opinion is cited by many arbitrators as limiting their discretion to only the facts present before them. Arbitrator Snow quoted the high court when he ruled a grievance was indeed untimely, even though the union thought it had a time extension. As the U.S. Supreme Court has stated:

An arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award. (See *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 80 S. Ct. 1358 (1960)).

In C-19341, Arbitrator Snow was faced with the procedural challenge when the union filed an untimely grievance. The union argued it understood it had an extension to file, but there was not a written extension agreement:

In a case of this sort, the disposition ultimately must be made on the basis of witness credibility. At the same time, it is important to recall that the arbitrator is as bound by the agreement of the parties as are they. For an arbitrator to impose his or her own sense of equity on the parties while ignoring the words of their agreement is to do them a disservice by exposing the result to judicial intervention.

When a grievance exceeds time limits, management can make the argument a grievance was not timely, but there are limits to this management objection. Article 15, Section 3 Grievance Procedure—General, says:

...if the Employer fails to raise the issue of timeliness at Formal Step A, or at the step at which the employee or Union failed to meet the prescribed time limits, whichever is later, such objection to the processing of the grievance is waived.

There is one certain way to avoid the timeliness obstacle entirely, if an extension is needed—request an extension, agree to the terms, and *put it in writing!* ☒

Consultation during route inspections

Postal regulations require management to consult with the regular carrier regarding evaluation and adjustment of their assigned route. These consultations are mandatory. Management is not allowed to simply meet with the carrier and tell them what it came up with and what adjustment it intends to make. Management must do all of the following:

Consult within time constraints—Management must complete all consultations within the 52-day window in a manner that allows full consideration of the carrier's comments and suggestions concerning the evaluation of the route and any proposed adjustments.

Provide documents in advance—Management must give the carrier the following documents in advance of the consultation regarding the evaluation of the route:

- Completed copies of Form 1838 at least five calendar days prior to consultation.
- Completed copy of front of Form 1840 at least one day prior to consultation. This completed copy must contain the following:
 - Totals and averages from Form 1838
 - Day-of-inspection data
 - Examiner's comments
 - Analysis of office work functions
 - Time recordings
- Partially completed copy of reverse of Form 1840 or attachments thereto, at least one day prior to consultation. It must contain the following:
 - All time disallowances
 - Related comments

Management is required to discuss certain matters at:

- The evaluation consultation, including:
 - Mail volume
 - Evaluation of route
 - Any time adjustment to evaluated street time based on alleged improper practices or operational changes
 - Any adjustment of evaluated street time based on a claim that conditions during the eight-week timecard period or week of count were not normal so as to justify not including such day or days in base street time computation
- The adjustment consultation (if management proposes relief or addition to your route)—including:
 - The proposed relief or addition

- The reasons for the proposed adjustment
- Whether the carrier agrees or disagrees
- The reasons the carrier agrees or disagrees
- The comments and recommendations of the carrier

Management must enter the following on the 1840:

- The carrier's comments
- The carrier's recommendations
- Whether the carrier agrees or disagrees with the proposed adjustments
- The reasons for the carrier's agreement or disagreement

Management is not allowed to require the carrier to sign a statement during the consultation(s).

Management must hold a second consultation if adjustments are proposed.

Management is required to consider the suggestions from the carrier serving the route.

If management attempts to adjust the carrier's street time due to alleged improper practices, operational changes, or claimed abnormal conditions during the eight-week analysis, management must document it on the reverse of the 1840 and discuss it with the carrier during the consultation regarding the route evaluation.

If management fails to so document, the carrier has the right, during the consultation, to note the absence of such documentation by writing a notation on, and initialing and dating, the 1840.

If documentation is not provided to the carrier within one week of notation by the carrier, disallow street time adjustments. If the carrier makes a notation on the 1840, as noted above, about the absence of documentation supporting a management time disallowance, management has one week to supply such documentation to the carrier. If management fails to do so within one week, the time adjustment shall be disallowed.

Promptly after consultation, if the carrier requests that the reverse of their copy of Form 1840 be completed, they must immediately give the copy to the manager for completion and return it no later than seven calendar days.

In next month's Contract Talk, we will discuss consultations in the Carrier Optimal Routing (COR) process. ☒

Consultations in a COR environment

You have survived your six-day count and inspection and now management is prepared to discuss the results of the inspection with you. This article should help prepare you for what to discuss with management during those all-important consultations. The *M-39 Handbook* places a responsibility on the letter carrier during the consultation to question the validity of any failure by management to credit time that the letter carrier demonstrated on the route during the count and inspection process. (Although it is a management handbook, *M-39* sections, as they pertain to wages, hours or conditions of employment, are enforceable through Article 19 of the National Agreement.)

So, how do you prepare for the consultations? Before the consultation, you must receive copies of your Forms 1838C—Carrier’s Mail Count-Letter Carrier Route Worksheet—at least five days prior to the consultation. Review those forms and determine, on a daily basis, your street time. To do this, take the total street time used each day (the time you clocked out to the street until the time you clock back to the office). From this total, deduct your allowed lunch (usually 30 minutes) and deduct any “waiting for mail” time. This street time should be computed for each day. (If you received street assistance during the inspection week, also add additional time, per Section 241.35.d of the *M-39*.) Add *your* total street time for the week (including Section 241.35.d* time) and divide by the number of days *you* were counted during the week. (*M-39*, Section 241.33 excludes the time on the street by a replacement carrier or carrier technician from weekly totals and averages.)

That average regular carrier street time should be the same as on Form 1840, Column E, Net Street Time Used, Average. If the street time you computed is more than the average line in Column E, you must ask management why there is a difference in those times, tell them you disagree with their time, and note that disagreement on Form 1840, and that you are requesting documentation to support the deduction of time credit and initial this request. Additionally, you should inform your union representative after the consultation that all of this occurred.

The Carrier Optimal Routing (COR) system is a management tool used to assist in the adjustment of letter carrier routes. The important thing for you to remember is that any time adjustments during a COR adjustment must be in compliance with Chapter 2 of the *M-39 Handbook* (see the COR settlement [M-01661]).

The COR settlement states, in part:

Any such adjustment to the carrier’s actual street time must be documented and explained by appropriate comments on the reverse of PS Form 1840. Additionally, any time adjustment to the base street time, which must be selected pursuant to *M-39* Section 242.321, will be documented, and discussed during carrier consultation.

It is in your interest to have the basic understanding of the forms, and of the *M-39*, so management does not violate your right to a fair and legitimate route adjustment.

What happens when COR or management changes travel time (travel to, travel within, relay time, etc.) or changes allied times when transferring territory to or from your route? Again, the COR settlement requires management to “validate” any changes to its time credits. Adjustment to your street time must comply with Sections 242.345 through 242.347 and Section 263, which states:

Before changes are actually or tentatively made, consult the carrier and obtain his or her views on the proposals.

When COR creates new travel patterns, it uses mapping software to determine distance and time from Point A to Point B. A potential problem with mapping software is that it does not take into account traffic signals, high traffic areas, construction, etc. It simply takes the distance and speed programmed by management and determines the time—this is not always an accurate reflection of the facts. You should request copies of PS Form 3999—Inspection of Letter Carrier Routes—for the route(s) whose territory has been added to your route. Those Forms 3999 will provide more accurate performed time than COR may produce.

If any territory and/or allied time credited to your route is less than what appears on the losing routes’ Form 3999, if any time credit has been deducted inappropriately, or if you suspect that time credit for new travel patterns are not accurate, note the absence of evidence to support such time deduction on the Form 1840 and place your initials. Also, request to see your shop steward to provide them with this information.

For more information on route inspection/adjustments, go to nalc.org > Departments > City Delivery > Update your NALC Route Inspection Kit. Remember, *what is most essential is to be prepared.* ☒

* For each section of your route that you received street help, add the time that it took you to do that portion of your route that is reflected for that section on PS Form 3999 on the day of inspection.