MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

RE: Annual Leave Exchange Option, Addendum

The parties acknowledge that due to the delay between acceptance and ratification of the 1998-2000 Collective Bargaining Agreement, eligible APWU bargaining unit employees covered by the November 20, 1998, Memorandum of Understanding (MOU) concerning Annual Leave Exchange Option, missed one opportunity to sell back a maximum of 40 hours of annual leave at the end of leave year 1998.

The parties agree that for the explicit purpose of correcting this situation, the MOU will be amended to apply the following specific agreement to APWU bargaining unit employees on a one-time basis:

1. The Annual Leave Exchange Option contained in the 1998-2000 Collective Bargaining Agreement will expire at midnight on the last day of leave year 1999.

2. APWU employees who are eligible under the criteria set forth in the Annual Leave Exchange Option MOU at the end of leave year 1999 will be allowed to sell back a maximum of 80 hours of annual leave.

3. The Union agrees to withdraw all grievances regarding Annual Leave Exchange.

4. This agreement is non-precedent setting and non-citable in any forum or for any purpose in the future.

Peter A. Sgro
Acting Manager
Contract Administration
APWU/NPMHU

Date 5/10/99

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

Date 5·11·99

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

May 19, 2000

Mr. Moe Biller
President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Moe:

Enclosed is your signed original copy of the Memorandum of Agreement, Re: Clarification of Regulations for National Day of Observance.

Sincerely,

Doug A. Tulino
Manager
Labor Relations Policies and Programs

Enclosure

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

MEMORANDUM OF AGREEMENT
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: Clarification of Regulations for National Day of Observance

The parties agree that the following procedures will apply to affected employees if the Postmaster General or designee determines that the Postal Service will participate in a National Day of Observation (e.g., National Day of Mourning), subsequent to the declaration of a National Day of Observance having been made by Executive Order of the President of the United States.

1. Full-time employees whose basic work week includes the National Day of Observance as a scheduled work day but who are not directed to report for work, will be granted administrative leave for that day.

2. Full-time employees whose basic work week includes the National Day of Observance as a scheduled work day, and who perform service, will be granted a day of administrative leave at a future date, not to exceed eight hours.

3. Full-time employees whose basic work week includes the National Day of Observance as a non-scheduled day and are not directed to report for work, will be granted a day of administrative leave at a future date.

4. If the National Day of Observance is a full-time employee's non-scheduled day and the employee is scheduled to work, the employee will receive overtime pay, plus up to eight hours of future administrative leave for the number of hours worked.

5. The same provisions apply to part-time regular employees as apply to full-time employees. The total hours of administrative leave should only equal the scheduled hours for the National Day of Observance, which may be less than eight hours. However, part-time regular employees whose basic work week includes the National Day of Observance as a non-scheduled work day and who are not directed to report for work on the National Day of Observance will be granted a day of administrative leave at a future date equal to the average number of daily paid hours in their schedule for the service week previous to the service week in which the National Day of Observance occurs, which may be less than eight hours.

6. Part-time flexible employees should be scheduled based on operational needs. Part-time flexible employees who work will be granted a day of administrative leave at a later date. The day of administrative leave will be based on the number of hours actually worked on the National Day of Observance, not to exceed eight hours. Part-time flexible employees who are not directed to work on the National Day of Observance will be granted administrative leave at a future date equal to the average number of daily paid hours during the service week previous to the service week in which the National Day of Observance occurs, not to exceed eight hours.

7. Transitional employees will only receive pay for actual work hours performed on the National Day of Observance. They will not receive administrative leave.

8. If an employee is on leave or Continuation of Pay on the National Day of Observance, the employee will be granted a day of administrative leave at a future date, not to exceed eight hours.

9. An employee on OWCP, AWOL, suspension or pending removal on the National Day of Observance will not be granted administrative leave. If the employee on AWOL, suspension or pending removal is returned to duty and made whole for the period of AWOL, suspension or removal, the employee may be eligible for administrative leave for the National Day of Observance if the period of suspension or removal for which the employee is considered to have been made whole includes the National Day of Observance. Such determination will be made by counting back consecutive days from the last day of the suspension or removal to determine if the employee had been made whole for the National Day of Observance.

10. Where provisions in this Memorandum of Agreement provide for a day of administrative leave to be taken at a future date, such leave must be granted and used within six months of the National Day of Observance or by the end of the Fiscal Year, whichever is later. However, administrative leave will not be granted to employees who are on extended leave for the entire period between the Day of Observance and six months from that date, or between the Day of Observance and the end of the Fiscal Year, whichever is later.

11. Administrative leave taken at a future date must be taken at one time.

12. Administrative leave to be taken at a future date may, at the employee's option, be substituted for previously scheduled but not used annual leave.

13. Administrative leave to be taken at a future date should be applied for by using the same procedures which govern the request and approval of annual leave consistent with Local Memoranda of Understanding.

Anthony J. Vegliante
Vice President
Labor Relations
U. S. Postal Service

Moe Biller
President
American Postal Workers
Union, AFL-CIO

Date: 5/4/00

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

February 22, 1996

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Dear Bill:

This will serve to further respond to your correspondence dated January 23 and follow up to your telecon with Donna Gill on February 13 regarding the Sick Leave for Dependent Care MOU. There is no dispute that this provision allows employees to use up to 80 hours of earned sick leave to care for family members. There is no requirement that employees use sick leave to cover such absences. It is incumbent upon the employee to submit a request for sick leave when he/she wants to be paid sick leave to cover such absences. The parties do not require the employee to use sick leave under such circumstances.

I hope this satisfactorily addresses your concerns.

Sincerely,

Anthony J. Vegliante
Manager
Contract Administration APWU/NPMHU

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

January 23, 1996

William Burrus
Executive Vice President
(202) 842-4246

Dear Tony:

This is to clarify the newly negotiate provisions in the Dependent Care Memorandum permitting an employee to use sick leave to care for a family member. The union interprets the use of sick leave as optional, pursuant to the determination by the employee. The intent of the Memorandum was that the use of sick leave to care for a family member is now consistent with postal rules, but the parties did not require the employee to use sick leave in such circumstances. In some circumstances, I can envision that an employee's absence is justified to care for a family member but the employee will elect not to use sick leave.

I am aware that the parties at the national level have a disagreement over the use of LWOP at the employee's option, but I view this issue as different in that the parties specifically provided in the newly negotiated language that "sick leave **may** be used". In addition, once the 80 hours have been exhausted, the employee is prohibited from using sick leave no matter their sick leave balance.

This is to determine if the employer agrees with the union's position that information provided to employees does not cause the initiation of grievances throughout the country.

Sincerely,

William Burrus
Executive Vice President

Anthony J. Vegliante
Grievance & Arbitration
475 L'Enfant Plaza, SW
Washington, DC 20260

cc: G. Bell

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

January 5, 1996

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Dear Bill:

This is in reference to your correspondence dated December 18 regarding sick leave for dependent care. Let me assure you that no one on my staff informed supervisors that sick leave for dependent care cannot be used for those absences covered by the Family and Medical Leave Act (FMLA). They were informed that there are absences covered by the sick leave for dependent care provisions that do not qualify as FMLA absences but when an absence is FMLA qualifying, there may be an overlap.

If you have any questions regarding this matter, please contact Donna Gill of my staff at 268-2373.

Sincerely,

Anthony J. Vegliante
Manager
Contract Administration, APWU/NPMHU

JAN 1996

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

December 18, 1995

Dear Tony:

I have received a number of inquiries concerning the application of the new contractual provision on the use of sick leave for dependent care and its application to the Family and Medical Leave Act. Several supervisors have informed local union officials that they were instructed in contract interpretation classes that employees could not use sick leave for the care of family members, if the employees absence is covered by the Family and Medical Leave Act.

This interpretation is contrary to the intent of the parties in negotiating the use of leave for dependent care. Employees whose absence is justified because of the medical condition of a family member that qualifies under the Family and Medical Leave Act may use up to 80 hours of their sick leave to cover such absence.

All absences that qualify under the newly negotiated dependent care provisions do not qualify under the Family and Medical Leave Act. Under the dependent care provisions, the family members condition is not required to meet the definition of a "serious health condition", however if the family members condition does meet the definition as required by FMLA, the employee is entitled to use sick leave for the absence.

Please provide written confirmation as to the employer's interpretation of the dependent care provisions as applied to absences under the Family and Medical Leave Act.

Sincerely,

William Burrus

Anthony J. Vegliante, Manager
Grievance & Arbitration Division
475 L 'Enfant Plaza, SW
Washington, DC 20260

UNITED STATES POSTAL SERVICE

RECEIVED
95 NOV -3 AM 8:44
PHILA
BULK MAIL
CENTER

November 01, 1995

MEMORANDUM FOR
JEAN D'AMICO
DENNIS ESTERLINE
JAMES GALLAGHER
PAT CORCORAN
JERRY CAPIE
CARL GAYLE

SUBJECT: SICK LEAVE FOR DEPENDENT CARE

Attached for your information are implementation guidelines for the new Memoranda of Understanding (MOUs) concerning Sick Leave for Dependent Care MOUs.

The memoranda are in effect for employees represented by the NALC and the APWU. The MOU with the NALC was effective August 19, 1995 (the date of the Stark Panel Award). The MOU with the APWU was effective October 01, 1995 (the date of the Clarke Panel Award).

If you have any questions regarding the MOUs contact Labor Relations.

Charles C. Polk II
Senior Labor
Relations Specialist

cc: A. Lariviere
D. O. Harris
H. White
Labor Relations Staff

P. O. Box 7956
PHILADELPHIA PA 19101-7956
(215) 895-8080
FAX: (215) 895-8079

all Direct Reports
Info/action
201
11-3-95
Pls Org

11/18/95
Jim Burke,
This is the District's position on the Sick Leave for Dependent Care. Have you been given a copy a copy. If not what is the APWU's position
Vince Tadeuci

SICK LEAVE FOR DEPENDENT CARE FOR EMPLOYEES REPRESENTED BY THE NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO (NALC) AND AMERICAN POSTAL WORKERS UNION, AFL-CIO (APWU)

1. Use of Earned Sick Leave

The new Memoranda of Sick Leave for Dependent Care (Memoranda or MOUs) provide that sick leave may be used by an employee to give care or otherwise attend to a family member with a medical condition which, if an employee had the same condition, would justify the use of sick leave. The sick leave that an employee is allowed to use under the MOUs is not additional sick leave; it is simply the earned sick leave that the employee has accrued under the Postal Service's regular sick leave policy as set forth in ELM section 513. However, there is a limit to the number of sick leave hours an employee can use for dependent care purposes under the MOUs; an employee can use no more than 80 hours of his or her earned sick leave within each leave year.

2. Defining a Dependent

Dependents under the MOUs are defined just as the Family Medical Leave Act (FMLA) defines them. Family members who qualify as dependents under the MOUs include son or daughter, parent, and spouse as defined in ELM section 515.2 (FMLA implementing regulations).

3. Approval of Sick Leave for Dependent Care

Approval of sick leave to care for a family member is the same as it is for approval of sick leave for the employee. (See ELM section 513). Therefore, the employee should normally submit a PS Form 3971 for approval in advance to the appropriate supervisor. To obtain approval of sick leave under the Memoranda, the employee must provide the following information in the remarks section of the PS Form 3971 or on an attachment thereto. First, that the sick leave is requested to care for or attend to a son, daughter, spouse, or parent. Second, the employee must specify the medical facts and provide the necessary explanation and/or documentation in support of the illness, incapacity, or other condition affecting the dependent in order for the supervisor to determine whether that same condition -- if afflicting the employee -- would warrant use of sick leave. Third, the employee must state the nature of his or her need to care for or attend to the dependent.

4. Documentation

In accordance with normal sick leave policy, medical documentation or other acceptable evidence of the medical need of the dependent is required in the following circumstances; when the employee is on restricted sick leave (ELM section 513.371); when it is deemed desirable by the supervisor for the protection of the Postal Service's interests (ELM section 513.361); when the sick leave is for extended periods (ELM section 513.363); or when the absence exceeds three days (ELM section 513.362). Documentation or explanation of the dependent's relationship to the employee may also be required. With regard to filing this documentation, supervisors have a responsibility to protect employees' dependents' privacy as well as the privacy of employees. If it is necessary to retain documentation containing restricted medical information for an employee's dependents, it is to be filed in the leave requester's medical file, unless the dependent is also an employee. Otherwise, such records should be returned to the employee or destroyed after necessary review.

In addition, such medical documentation or evidence of medical need is required when necessary to determine whether the FMLA applies to the employee's situation. Supervisors are reminded that they have an obligation to advise the employee of his or her FMLA rights if they become aware of circumstances which may trigger the FMLA, such as caring for a dependent

with a "serious health condition" (see ELM section 515). If such condition exists, it may invoke the protections of the FMLA.

5. Sick Leave for Dependent Care and the FMLA: Differences and Overlap

The FMLA entitles employees to time off for specified situations. Under the FMLA, the determination of whether the time off is paid or unpaid is left to the employer's leave policies. Allowing the use of sick leave for dependent care is a new policy available to all employees in NALC and APWU represented positions.

FMLA coverage for an absence depends on the employee's eligibility and the reason for the absence. Sick leave for dependent care may or may not be covered by the FMLA, the same as sick leave for an employee's illness may or may not be covered by the FMLA. Unless the employee's situation meets the FMLA criteria, it is not an FMLA covered absence. Under the MOUs, it is not necessary that sick leave be used for a serious health condition, as it is under the FMLA.

The definition for a dependent in the MOUs is the same that is defined in the FMLA.

6. Corrective Action for Irregular Attendance

The MOUs do not diminish the employee's obligation to maintain regular attendance. Irregularities in attendance can be the basis for corrective action, including discipline. However, absences which qualify under the FMLA cannot be considered in any determination to take disciplinary action.

UNITED STATES POSTAL SERVICE

May 17, 1994

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This is in response to your April 20 inquiry regarding the eligibility of postal employees to use leave donated under the Leave Sharing Program for absences authorized under the Family and Medical Leave Act.

Employees who suffer serious personal health conditions and who are eligible for coverage under the Family and Medical Leave Act may participate in the Leave Sharing Program (LSP). However, eligibility is not automatic in that the employee must qualify under the current provisions of the LSP. For example, donated leave would not be available to employees who may qualify for FMLA before they exhaust their earned/unused sick and annual leave balances and accumulate 80 hours or more of leave without pay due to the serious health condition. Also, an employee may be eligible for coverage under FMLA but may be excluded from the LSP because he/she is a noncareer employee.

This is certainly consistent with existing leave policies and with our viewpoint that employees need our support and consideration when confronted with serious illnesses. If you have any further questions, please contact Corine T. Rodriguez at (202) 268-3823.

Sincerely,

Sherry A. Cagnoli
Manager
Contract Administration (NALC/NRLCA)
Labor Relations

475 L'Enfant Plaza SW
Washington DC 20260

UNITED STATES
POSTAL SERVICE

April 12, 1994

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This is in response to your March 9 correspondence concerning the need for uniform responses to Family and Medical Leave Act (FMLA) questions. Enclosed for your review is Attachment 1, the responses we prepared for your questions as well as Attachment 2, additional questions and answers which have arisen since our last meeting.

The responses represent our best efforts to provide guidance and information to all our employees so that workplace relationships are not dissolved while workers attend to pressing family health obligations or their own serious illness. If you have any questions concerning our answers or if you would like to discuss them, please call Corine T. Rodriguez of my staff at (202) 268-3823.

I appreciate your help and cooperation in this matter.

Sincerely,

Sherry A. Cagnoli
Manager
Contract Administration (NALC/NRLCA)
Labor Relations

Enclosures

475 L'Enfant Plaza SW
Washington DC 20260

1. What certification is required for employees requesting FMLA because of the birth or placement of a son or daughter and in order to care for such son or daughter after birth:

   The required information is:

   a) That the employee is the parent.

   b) Date of birth or placement of this son or daughter.

   Note: There are no specified optional forms which the supervisor must accept. Optional forms are acceptable only if they are completed with sufficient detail (as described in 825.306).

2. Is medical certification required for the birth or placement of a son or daughter?

   No medical certification is required for the placement or to care for a son or daughter who does not have a serious health condition.

   825.302(c)

   Medical certification is required if the mother is requesting time off because of the pregnancy.

   825.114

3. Can an employee use intermittent leave or work a reduced schedule for the birth or placement of a son or daughter or to care for a newborn son or daughter?

   Yes, but only with the agreement of the employer.

   825.203

4. Can an employee use intermittent leave or work a reduced schedule because of pregnancy or the serious health condition of a newborn child?

Yes, when medically necessary due to the mother's pregnancy or the newborn child's serious health condition. The employer may require a certification from the health care provider that such leave is medically necessary and the expected duration and schedule of such leave.

825.117

5. Is the employer's approval required for an employee to use intermittent leave or work a reduced schedule if the employee, spouse, child or parent has a serious health condition?

   No, provided proper medical certification has been provided. (The employee must attempt to schedule their leave so as not to disrupt the employer's operation and may be assigned to an alternative position with equivalent pay and benefits that better accommodates the intermittent or reduced leave schedule.)

   825.203 and 825.117

6. Are employees entitled to FMLA if their absence is required during procedures intended to induce pregnancy, i.e., in-vitro fertilization and other insemination procedures.

   Yes, as certified by the attending physician.

   825.114c and 825.114 (3)

7. Is treatment for substance abuse covered as a serious health condition?

   Yes, if certified by the medical care provider as a serious health condition.

   825.114

8. Is an employee required to provide medical documentation for each absence after a medical provider has certified that the employee is receiving continuing treatment?

   No, but the employer may request certification if there is reason to question the appropriateness of the leave or its duration. An employer may request recertification of medical conditions to support leave requests at any reasonable interval, but not more often than every 30 days, unless:

   a) The employee requests an extension of leave.

   b) Circumstances have changed significantly from the original request.

   c) The employer receives information that casts doubt upon the continuing validity of the certification.

   d) The absence is for a different condition or reason.

   825.305(b) and 825.308

9. Does the employee have the option of using LWOP in conjunction with annual or sick leave for FMLA?

   Yes, subject to the approval of the leave in accordance with normal leave approval procedures.

   825.208 and Article 10, section 6

10. Can an employee be disciplined or receive other administrative action for absences covered by the FMLA?

    No. However, if the absence exceeds more than 12 weeks as authorized by FMLA, an employee could be subject to disciplinary action or other administrative action.

    825.220(c)

11. What can an employer do if it questions the adequacy of a medical certification?

    If the certification includes the required information, the employer may require the employee to obtain a second medical opinion at the employer's expense. The second health care provider may not be employed on a regular basis by the employer.

    825.307 and 825.308

12. Is advance written notice required for employees' use of FMLA?

    Not in the case of unexpected emergencies. In such cases, the employee should provide notice by telephone, telegraph, FAX or other electronic means. Additional information must be provided when it can readily be accomplished as a practical matter.

    825.302 and 825.303

13. Can properly submitted FMLA requests be denied because of operational reasons?

    No. If the absence is otherwise justified under FMLA, the leave cannot be denied. (When the necessity for leave is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than 30 days' notice as practicable. If the necessity for leave is based on planned medical treatment the employee shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer and shall provide the employer with not less than 30 days notice, as practicable.

    825.100, 825.112, 825.203 and PL 103-3 Section 102(e)

14. If an employee provides notice of the need for FMLA leave, what information must the employer provide to the employee?

    a) Whether or not the leave will be counted against the FMLA entitlement.

b) Any requirements for the employee to furnish medical certification and the consequences of failing to do so.

c) The employee's right to use annual, sick leave, or LWOP.

d) Any requirement for the employee to make health benefit payments and the arrangements for making such payments.

e) Any requirement for the employee to present a fitness-for-duty certificate to be restored to employment.

f) The employee's right to restoration to the same or an equivalent job upon return from leave.

g) The employee's potential liability for payment of health insurance premiums paid by the employer if the employee fails to return to work.

825.301 (c)

Attachment 2

FAMILY AND MEDICAL LEAVE (FMLA)
QUESTIONS & ANSWERS

Q. Can an FLSA exempt employee now take leave in less than full day increments?

A. Only if the time off is due to reasons covered by FMLA. Charging an FLSA exempt employee a partial day of leave for any other reason is a violation of the Fair Labor Standards Act.

Q. How are the 12 weeks of FMLA tracked?

A. By the leave request forms (3971) maintained for two years. When a leave is requested for a condition covered by FMLA, the supervisor writes FMLA in the form's remarks section. In most cases it will be pretty obvious to the supervisor when an employee is getting close to 12 weeks. When questions arise, the supervisor may have to review the request forms submitted by the employee since the start of the leave year.

Q. Must the employee state the leave is FMLA?

A. No, leave requested for a covered condition is part of the 12 workweeks provided by the FMLA policy. When an employee requests leave for a covered condition, the supervisor should note "FMLA" in the request form's remarks section, and give the employee the required notice.

Q. I am having trouble getting a baby sitter on Saturdays and need to be off every other Saturday to care for my 5 month old baby. Can I take family leave every other Saturday for that purpose?

A. Leave requested to care for your child, other than for medical reasons, may be taken on an intermittent basis only with your supervisor's approval. (ELM 516.61.)

Q. When may a supervisor deny or delay leave requested for a condition covered by family leave?

A. When less than 30 days' notice, or as much notice as practical under the circumstances, is given. Another situation is when leave requested on an intermittent or

reduced schedule because of the birth and care of the newly born child, or because of the placement of a child with the employee. Such leave is approved based on the employee's need, Postal Service need, and costs to the Postal Service. (ELM 515.51 and 515.61.)

Q. Is FMLA in addition to sick and annual leave?

A. FMLA is in addition to annual or sick leave that is taken for reasons not covered by FMLA. FMLA does not provide for additional sick or annual leave. It merely provides up to 12 workweeks absence for covered conditions. During such absence either annual, sick or LWOP is taken by the employee depending on the reason for the absence, and the employee's leave balances.

Q. Can a step increase be deferred as a result of FMLA?

A. It can happen, but is not likely. There is a maximum of 12 weeks during a leave year for leave taken as FMLA. An employee must have 13 weeks of LWOP during the step increase wait period for a step increase to be deferred. I should mention that the Family and Medical Leave Act does not require accrual of any rights or benefits during a period of leave.

Q. Do employees retain the no-layoff protection when FMLA interrupts the 20 pay periods worked per year during the six year period of continuous service?

A. Yes. However, since the maximum FMLA time off is 12 weeks or 6 pay periods per leave year, loss of the no-layoff protection would normally be for other reasons. The only time FMLA would interrupt the years required for protection is in cases where more than 12 weeks of FMLA during two different "leave" years result in more than 6 pay periods of absence during an individual employee's "anniversary" year. In these rare cases the no-layoff protection must manually be restored. This is accomplished by sending a memorandum to the Minneapolis Information Service Center.

UNITED STATES POSTAL SERVICE Cert P417 403 829

March 31, 1994

Mr. Vincent R. Sombrotto
President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2196

Mr. Moe Biller
President
American Postal Workers Union,
AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Gentlemen:

Enclosed is a draft revision of the notice given to employees who request leave for conditions covered by the Family and Medical Leave Act. The notice has been modified in accordance with comments received since its implementation in August 1993. The modifications are in bold type and they have been revised to include that sick leave is available under certain conditions to care for family members with a contagious disease.

As you know, additional changes may be required upon the issuance of the Department of Labor's (DOL) final regulations which are scheduled for publication in August 1994.

Should there be any questions concerning this matter, please contact Corine T. Rodriguez at (202) 268-3823.

Sincerely,

Sherry A. Cagnoli
Manager
Contract Administration (NALC/NRLCA)
Labor Relations

Enclosure

475 L'Enfant Plaza SW
Washington DC 20260

Attachment 2

FAMILY AND MEDICAL LEAVE (FMLA) QUESTIONS & ANSWERS

Q. Can an FLSA exempt employee now take leave in less than full day increments?

A. Only if the time off is due to reasons covered by FMLA. Charging an FLSA exempt employee a partial day of leave for any other reason is a violation of the Fair Labor Standards Act.

Q. How are the 12 weeks of FMLA tracked?

A. By the leave request forms (3971) maintained for two years. When a leave is requested for a condition covered by FMLA, the supervisor writes FMLA in the form's remarks section. In most cases it will be pretty obvious to the supervisor when an employee is getting close to 12 weeks. When questions arise, the supervisor may have to review the request forms submitted by the employee since the start of the leave year.

Q. Must the employee state the leave is FMLA?

A. No, leave requested for a covered condition is part of the 12 workweeks provided by the FMLA policy. When an employee requests leave for a covered condition, the supervisor should note "FMLA" in the request form's remarks section, and give the employee the required notice.

Q. I am having trouble getting a baby sitter on Saturdays and need to be off every other Saturday to care for my 5 month old baby. Can I take family leave every other Saturday for that purpose?

A. Leave requested to care for your child, other than for medical reasons, may be taken on an intermittent basis only with your supervisor's approval. (ELM 516.61.)

Q. When may a supervisor deny or delay leave requested for a condition covered by family leave?

A. When less than 30 days' notice, or as much notice as practical under the circumstances, is given. Another situation is when leave requested on an intermittent or

reduced schedule because of the birth and care of the newly born child, or because of the placement of a child with the employee. Such leave is approved based on the employee's need, Postal Service need, and costs to the Postal Service. (ELM 515.51 and 515.61.)

Q. Is FMLA in addition to sick and annual leave?

A. FMLA is in addition to annual or sick leave that is taken for reasons not covered by FMLA. FMLA does not provide for additional sick or annual leave. It merely provides up to 12 workweeks absence for covered conditions. During such absence either annual, sick or LWOP is taken by the employee depending on the reason for the absence, and the employee's leave balances.

Q. Can a step increase be deferred as a result of FMLA?

A. It can happen, but is not likely. There is a maximum of 12 weeks during a leave year for leave taken as FMLA. An employee must have 13 weeks of LWOP during the step increase wait period for a step increase to be deferred. I should mention that the Family and Medical Leave Act does not require accrual of any rights or benefits during a period of leave.

Q. Do employees retain the no-layoff protection when FMLA interrupts the 20 pay periods worked per year during the six year period of continuous service?

A. Yes. However, since the maximum FMLA time off is 12 weeks or 6 pay periods per leave year, loss of the no-layoff protection would normally be for other reasons. The only time FMLA would interrupt the years required for protection is in cases where more than 12 weeks of FMLA during two different "leave" years result in more than 6 pay periods of absence during an individual employee's "anniversary" year. In these rare cases the no-layoff protection must manually be restored. This is accomplished by sending a memorandum to the Minneapolis Information Service Center.

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

NOV 15 1993

Dear MR BURRUS

This is in response to your request for an advisory opinion under the Family and Medical Leave Act of 1993 (FMLA) regarding mandatory "modified" or "light duty" job programs for temporarily disabled employees.

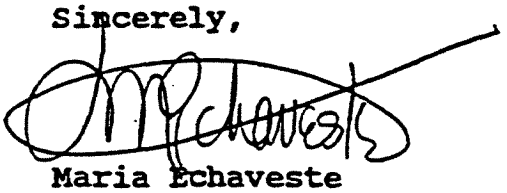
You ask if an employer can require a temporarily disabled "eligible employee," who seeks FMLA leave for a serious health condition that makes the employee unable to perform the employee's position, to accept an alternative position (with similar pay and benefits) that has been modified to eliminate the essential functions which the employee cannot perform. If so, you ask if the employer can deny the requested FMLA leave and require the employee's presence at work in the modified job.

The FMLA Regulations, 29 CFR Part 825, at § 825.702(d), provide that if FMLA entitles an employee to leave, an employer may not, in lieu of FMLA leave entitlement, require the employee to take a job with a reasonable accommodation. Thus, an employer could not require an employee to work in a restructured job instead of granting the employee's FMLA leave request in the example you posed in your inquiry.

FMLA does not prohibit an employer from accommodating an employee's request to be restored to a different shift, schedule, or position which better suits the employee's personal needs on return from leave [see § 825.215(e)(4)], but the employee cannot be induced by the employer to accept a different position against the employee's wishes.

As noted in your letter, § 825.204 of the regulations addresses temporary transfers to alternative positions with equivalent pay and benefits for employees who request intermittent leave or leave on a reduced leave schedule for planned medical treatment, including for a period of recovery from a serious health condition.

Sincerely,



Maria Echaveste
Administrator

NOTICE FOR EMPLOYEES REQUESTING LEAVE FOR CONDITIONS COVERED BY THE FAMILY AND MEDICAL LEAVE POLICIES

I. Qualifying Conditions

The Postal Service Family and Medical Leave policies provide that employees meeting the eligibility requirements must be allowed to take time off for up to 12 workweeks in a leave year for the following conditions:

(1) Because of the birth of a son or daughter (including prenatal care), or to care for such son or daughter. Entitlement for this condition expires 1 year after the birth.
(2) Because of the placement of a son or daughter with you for adoption or foster care. Entitlement for this condition expires 1 year after the placement.
(3) In order to care for your spouse, son, daughter, or parent who has a serious health condition. Also, in order to care for those who have a serious health condition and who stand in the position of a son or daughter to you or who stood in the position of a parent to you when you were a child.
(4) Because of a serious health condition that makes you unable to perform the functions of your position.

II. Eligibility

To be covered by these policies, you must have been employed by the Postal Service for a total of at least 1 year and must have worked a minimum of 1,250 hours during the 12-month period before the date your absence begins.

III. Type of Leave

Time off taken under these policies is counted toward the 12 workweeks allowed by the Family and Medical Leave Act; however, this is not a separate type of leave, but is charged to annual leave, sick leave, and/or LWOP in accordance with current leave policies. Note that sick leave is available only for your own health condition and **for exposure to, or caring for, a family member with a contagious disease ruled as requiring isolation, quarantine, or restriction of movement of the patient for a particular period by the health authorities having jurisdiction. Sick leave** cannot be used to care for others **except under these conditions.**

IV. Documentation

Supporting documentation is required for your leave request to receive final approval. **Documentation requirements may be waived in specific cases by your supervisor.**

- For condition (1) or (2), you must provide the birth or placement date.
- For condition (3), you must provide documentation from the health care provider stating the date the serious health condition began, probable duration of the condition, and appropriate medical facts. You must also provide documentation of when you are needed to provide the care or psychological support.

(CONTINUED)

o For condition (4), you must provide documentation from the health care provider stating the date the serious health condition began, probable duration of the condition, appropriate medical facts.

o If the time off requested is to care for someone other than a biological parent or child, appropriate explanation of the relationship may be required.

Supporting information that is not provided at the time the leave is requested must be provided within 15 days, unless this is not practical under the circumstances. If the Postal Service questions the adequacy of a medical certification, a second or third opinion may be required and the Postal Service will pay for these opinions.

If the absence is due to your own health condition and exceeds 21 calendar days, you must submit evidence of your ability to return to work before you will be allowed to return. Also, during your absence, you must keep your supervisor informed of your intentions to return to work and status changes that could affect your ability to return. Failure to provide information can result in the denial of family and medical leave under these policies.

V. Benefits

Health Insurance - To continue your health insurance during your absence, you must **continue to** pay the "employee portion" of the premiums. This ~~will~~ continues to be withheld from your salary while you are in a pay status. If the salary for a pay period does not cover the full employee portion, you ~~will be~~ **are** required to make the payment. If this occurs, you will be advised of the procedures for payment.

Life Insurance - Your basic life insurance is free and continues. If you are in a LWOP status for more than a year, this coverage is discontinued; ~~however~~ **in this case**, you ~~will~~ have the option to convert to an individual policy. If you have optional life insurance coverage, it continues. Your premium payments ~~will~~ continue to be withheld from your pay check. If you are in a nonpay status, your optional insurance coverage continues without cost for up to 12 months. Thereafter you can convert this coverage to an individual policy.

Flexible Spending Accounts (FSAs) - If you participate in the FSA program, see your employee brochure for the terms and conditions of continuing coverage during leave without pay.

VI. Return to Duty

At the end of your leave, you will be returned to the same position you held when the absence began (or a position equivalent to it), provided you are able to perform the functions of the position and would have held that position at the time you returned if you had not taken the time off.

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

May 22, 1990

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Dear Bill:

This letter is in response to your April 20 correspondence regarding "denying PTF employees leave during a week which includes a holiday."

Pursuant to Section 512.523b of the Employee and Labor Relations Manual, the policy for granting PTF leave is as follows:

"Part-time flexible employees who request leave on days that they are scheduled to work, except legal holidays, may be granted leave provided they can be spared. Leave which is charged to these employees cannot exceed 8 hours on any 1 day. The installation head may also consider a request for annual leave on any day a part-time flexible is not scheduled to work."

If you have any further questions regarding this matter, please contact Patricia Connelly of my staff at 268-3842.

Sincerely,

Joe Mahon

Joseph J. Mahon, Jr.
Assistant Postmaster General

American Postal Workers Union, AFL-CIO
1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

April 20, 1990

Dear Mr. Mahon:

By letter of January 30, 1989, I requested the USPS interpretation of denying PTF employees leave during a week which includes a holiday. I was subsequestly requested to provide a copy of a local policy as an example. I have been unable to locate a written local policy. However, the inquiry of my letter is still applicable.

Please provide a written response as to the employer's position on this subject.

Sincerely,

William Burrus
Executive Vice President

Joseph J. Mahon, Jr.
Asst. Postmaster General
U.S. Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

WB:rb
opeiu#2
afl-cio

American Postal Workers Union, AFL-CIO
1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

January 30, 1989

Dear Mr. Mahon:

This is in regard to the Memorandum of Understanding on maximizing the number of full-time employees and the requirement to work 39 or more hours per week for a 6-month period.

The parties have agreed that approved leave is credited for the required 39 hours. Recently, I learned that the payroll centers have instituted a policy of refusing to pay PTFs for approved leave in any week that includes a holiday, if the PTF has 32 hours or more of work hours or a combination of work and leave hours prior to the request for leave.

Example: Employee has 32 work hours and requests eight hours of leave. Such leave is approved at the installation level but is automatically rejected by the payroll center because a holiday falls within that week. The same results would occur if the PTF's hours included 24 work hours and eight hours leave prior to the subsequent leave request.

A review of the Employee and Labor Relations Manual reveals that the only exception for leave payment which is otherwise approved is on a legal holiday. This language does not deny payment for leave on days in a week that includes a holiday if such request is not for the holiday.

The immediate impact of the policy is to disqualify employees who would otherwise qualify for the maximization requirements. However, the policy also denies the payment of approved leave.

The Union does not find support for this policy in any regulation or contract language and requests the employer's justification for its implementation.

Sincerely,

William Burrus
Executive Vice President

Joseph J. Mahon
Asst. Postmaster General
U.S. Postal Service
475 L"Enfant Plaza, SW
Washington, DC 20260-4100

WB:rd

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

May 1, 1997

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Dear Bill:

This letter is in response to your correspondence dated February 27, 1997, concerning the application of donated leave to periods of LWOP and receive payment. You indicated that in Des Moines, the Data Center has refused to apply donated leave retroactively and instead has retroactively deducted earned sick leave accumulated after the employee's return to duty.

There is no disagreement between the parties over the right of employees to apply donated leave retroactively to a period of authorized absence. The Des Moines issue was investigated and a PS Form 2240 has been generated in order to credit the employee's leave retroactively.

If there are any questions concerning this matter, you may contact Barbara L. Phipps of my staff at (202) 268-3834.

Sincerely,

Peter A. Sgro
Acting Manager
Contract Administration APWU/NPMHU

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

6

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

February 27, 1997

Dear Tony:

In the implementation of the Leave Sharing agreement, the parties have agreed that employees who have been donated leave may apply the leave to periods of LWOP and receive payment. In at least one case eminating from DesMoines, the Data Center has refused to apply the donated leave retroactively and instead has retroactively deducted earned sick leave accumulated after the employees return to duty.

This is to determine if there is a disagreement between the parties over the right of employees to apply donated leave retroactively to a period of authorized absence.

Thank you for your attention to this matter.

Sincerely,

William Burrus
Executive Vice President

Anthony J. Vegliante, Manager
Grievance & Arbitration Division
475 E'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

UNITED STATES POSTAL SERVICE

May 17, 1994

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This is in response to your April 20 inquiry regarding the eligibility of postal employees to use leave donated under the Leave Sharing Program for absences authorized under the Family and Medical Leave Act.

Employees who suffer serious personal health conditions and who are eligible for coverage under the Family and Medical Leave Act may participate in the Leave Sharing Program (LSP). However, eligibility is not automatic in that the employee must qualify under the current provisions of the LSP. For example, donated leave would not be available to employees who may qualify for FMLA before they exhaust their earned/unused sick and annual leave balances and accumulate 80 hours or more of leave without pay due to the serious health condition. Also, an employee may be eligible for coverage under FMLA but may be excluded from the LSP because he/she is a noncareer employee.

This is certainly consistent with existing leave policies and with our viewpoint that employees need our support and consideration when confronted with serious illnesses. If you have any further questions, please contact Corine T. Rodriguez at (202) 268-3823.

Sincerely,

for Sherry A. Cagnoli
Manager
Contract Administration (NALC/NRLCA)
Labor Relations

475 L'Enfant Plaza SW
Washington DC 20260

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

June 22, 1999

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This is in response to your June 7 correspondence concerning the May 28 notice of changes to the Employee and Labor Relations Manual (ELM) Subchapter 510 Leave, section 514.22 and 514.22c.

After a meeting held on June 19 to discuss those changes, revisions were made that we believe address your concerns. Enclosed is a copy of the language that will be included in the next publication of Issue 14 of the ELM.

Should you have any questions or concerns, please call Corine Rodriguez of my staff at (202) 268-3823.

Sincerely,

Charles E. Baker
Acting Manager
Labor Relations Policies and Programs

Enclosure

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

the employee received salary or leave payments from another federal agency.

513.83 Separation by Death

If an ill employee dies without returning to duty and without making application for sick leave, the postal official who is in charge of the installation grants sick leave for the period of illness or disability immediately prior to death. If the employee was in pay status on the day of death or immediately prior to death, the employee's beneficiary is entitled to receive compensation without charge to leave for the date of death. The latter applies whether or not employees have leave to their credit.

513.9 Collection for Unearned Sick Leave

Collection for used but unearned sick leave at the time of separation is made in the same manner as for unearned annual leave (~~s~~See 512.72).

514 Leave Without Pay (LWOP)

514.1 Definitions

The following definitions apply for the purposes of the section:

a. LWOP is an authorized absence from duty in a nonpay status.

b. LWOP may be granted upon the employee's request and covers only those hours which the employee would normally work or for which the employee would normally be paid.

c. LWOP is different from AWOL (absent without leave), which is a nonpay status due to a determination that no kind of leave can be granted either because (1) the employee did not obtain advance authorization or (2) the employee's request for leave was denied.

514.2 Policy

514.21 Restriction

LWOP in excess of 2 years is not approved unless specifically provided for in postal policy or regulations.

514.22 Administrative Discretion

Each request for LWOP is examined closely and a decision is made based on the needs of the employee, the needs of the ~~USPS~~Postal Service, and the cost to the ~~USPS~~Postal Service. The granting of LWOP is a matter of administrative ~~discretion. It~~discretion and is not granted on the employee's demand except ~~that:~~ as provided in collective bargaining agreements or as follows:

a. A disabled veteran is entitled to LWOP, if necessary, for medical treatment.

b. A Reservist or a National Guardsman is entitled to LWOP, if necessary, to perform military training duties under the Vietnam Era Veterans' Readjustment Act of 1974. (See 38 U.S.C., section 2024).

c. An employee who requests and is entitled to time off under 515, Absences for Family Care or Serious Health Problem of Employee, must be allowed up to a total of 12 workweeks of absence within a Postal Service leave year for one or more reasons listed in 515.41. ~~Leave without pay may be taken in combination with annual or sick leave for which the employee is qualified.~~

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Re: Case No. Q90C-4Q-C 95048663
Washington, DC - Headquarters

Recently, you met with Postal Service representatives to discuss the above-captioned grievance, currently pending national level arbitration.

This grievance concerns the effect of the Memorandum of Understanding (MOU) concerning "Paid Leave and LWOP" found on page 312 of the 1998 National Agreement.

The parties hereby reaffirm the attached Memorandum of Understanding dated November 13, 1991, which serves as the parties' further agreement on the use of paid leave and LWOP.

We further agree that:

1. As specified in ELM 513.61, if sick leave is approved, but the employee does not have sufficient sick leave to cover the absence, the difference is charged to annual leave or to LWOP at the employee's option.

2. Employees may use LWOP in lieu of sick or annual leave when an employee requests and is entitled to time off under ELM 515, Absences for Family Care or Serious Health Problem of Employee (policies to comply with the Family and Medical Leave Act).

3. In accordance with Article 10, Section 6, when an employee's absence is approved in accordance with normal leave approval procedures, the employee may utilize annual and sick leave in conjunction with leave without pay. As we have previously agreed, this would include an employee who wishes to continue eligibility for health and life insurance benefits, and/or those protections for which the employee may be eligible under Article 6 of the National Agreement.

With the above understandings, which shall apply to currently pending timely grievances and those filed in the future, we agreed to settle this grievance. Please sign below as acknowledgment of your agreement to resolve this grievance, removing it from the pending national arbitration listing.

Pete Bazylewicz
Manager
Grievance and Arbitration

William Burrus
Executive Vice President
American Postal Workers'
Union, AFL-CIO

Date: 4-20-99

Attachment

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

The undersigned parties negotiated a Memorandum of Understanding (MOU) entitled "LWOP in Lieu of SL/AL" that allows an employee to request Leave Without Pay (LWOP) prior to exhausting annual or sick leave. The following serves as a guide for administering these newly negotiated MOU provisions.

The basic intent of this MOU is to establish that an employee need not exhaust annual or sick leave prior to requesting LWOP. One example of the term "need not exhaust" is when an employee requests maternity or paternity leave and was previously required by local management to exhaust their sick or annual leave prior to receiving LWOP. An employee now has the option of requesting LWOP in lieu of sick or annual leave prior to reaching the point where they may exhaust their leave benefits.

It was not the intent of this MOU to increase leave usage (i.e. approved time off). Moreover, it was not the intent that every or all instances of approved leave be changed to LWOP thus allowing the employee to accumulate a leave balance which would create a "use or lose" situation. Furthermore, the employer is not obligated to approve such leave for the last hour of the employee's scheduled workday prior to and/or the first hour of the employee's scheduled workday after a holiday.

This MOU does not change Local Memoranda of Understanding regarding procedures for prescheduling annual leave for choice or nonchoice vacation periods. It also was not intended to provide employees the opportunity to preschedule LWOP in lieu of annual leave for choice or nonchoice periods. An employee may at a later date request to change the prescheduled annual leave to LWOP, subject to supervisor approval in accordance with normal leave approval procedures. However, this option is available to an employee only if they are at the point of exhausting their annual leave balance.

This MOU does not establish a priority between incidental requests for annual leave or LWOP when several employees are simultaneously requesting such leave. The normal established local practice prevails, i.e., whether leave requests are approved in order of seniority or on a first come first serve

basis or other local procedure. This memorandum of understanding has no effect on any existing leave approval policies or other leave provisions contained in the Employee and Labor Relations Manual or other applicable manuals and handbooks.

William J. Downes
Director
Office of Contract
Administration
Labor Relations Department
U.S. Postal Service

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

11-13-91
Date

for nonretiree veterans, using SF 813, for Retirement, Thrift Savings Plan, and Reduction in Force (RTR) purposes.

. . .

512.5 Leave Charge Information

. . .

512.52 Part-Time Employees

. . .

512.5221 Part-Time Regular

A part-time employee who is granted annual leave and performs service on the same ~~duty~~ day is not allowed to work more hours than would total 8 hours when combined with leave hours.

. . .

514 Leave Without Pay (LWOP)

. . .

514.2 Policy

. . .

514.22 Administrative Discretion

Each request for LWOP is examined closely and a decision is made based on the needs of the employee, the needs of the USPS, and the cost to the USPS. The granting of LWOP is a matter of administrative discretion. It is not granted on the employee's demand except that:

a. A disabled veteran is entitled to LWOP, if necessary, for medical treatment.

b. A Reservist or a National Guardsman is entitled to LWOP, if necessary, to perform military training duties under the Vietnam Era Veterans' Readjustment Act of 1974. (See 38 U.S.C., section 2024.)

c. An employee who requests and is entitled to time off under 515, Absences for Family Care or Serious Health Problem of Employee, must be allowed up to a total of 12 workweeks of absence within a Postal Service leave year for one or more reasons listed in 515.41. Leave without pay may be taken in ~~combination with~~ addition to annual or sick leave for which the employee is qualified in accordance with an approved absence.

. . .

5-24-99 Corrections to Draft Leave Provisions in ELM 510

The following corrections and clarifications have been made to the draft previously provided.

512.223, **Retired Military Personnel** (under determining leave category for military personnel), section c (4) is modified by adding a note to clarify the use of form SF 813.

512.522, **Part-Time Regular** (under leave charge information for part-time employees), is modified to correct a typographical error.

514.22, **Administrative Discretion** (under LWOP policy), section c is modified to conform to a recent change in policy.

519.28, **Special Events** (under events and procedures for granting administrative leave), has the reference to the F-15 modified to indicate it is the appropriate handbook to find the expense reimbursement policies related to attending special events.

The sections affected by revisions appear below.

510 Leave

512. Annual Leave

. . .

512.2 Determining Annual Leave Category

. . .

512.223 Retired Military Personnel

. . .

c. Verification. Military service should be verified:

. . .

(4) *Campaign/Expeditionary Service.* Verify by sending a completed SF 813, Verification of a *Military Retiree's Service in Nonwartime Campaigns or Expeditions*, to the appropriate military record center. See Exhibit 521.223c for an illustration of SF 8113. This form is not stocked in the material distribution center, it is to be reproduced locally.
Note: Campaign and expeditionary service should also be verified

COLLECTIVE BARGAINING AGREEMENT

Between
American
Postal Workers
Union, AFL-CIO

And
U.S. Postal Service

November 21, 1990—
November 20, 1994

leave balance will be paid in a lump sum.

Appropriate regulations and procedures will be issued and the program will be implemented within 180 days from the signing of this Agreement.

(The preceding Memorandum of Understanding, Leave Sharing, applies to Transitional Employees.)

\+ + +

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
THE JOINT BARGAINING COMMITTEE
(American Postal Workers Union, AFL-CIO, and
National Association of Letter Carriers, AFL-CIO)

Re: Paid Leave and LWOP

The parties agree that an employee need not exhaust annual leave and/or sick leave before requesting leave without pay. As soon as practicable after the signing of the 1990 National Agreement, Employee and Labor Relations Manual (ELM) Exhibit 514.4(d) will be amended to conform to this Agreement.

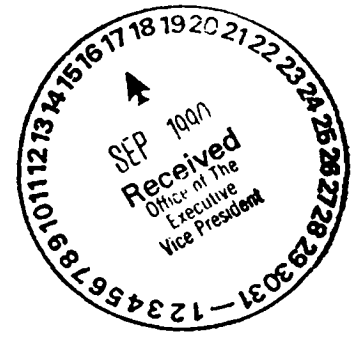
The parties further agree that this Memorandum does not affect the administrative discretion set forth in ELM Part 514.22, nor is it intended to encourage any additional leave usage.

Grievance Number H7C-NA-C 61 is withdrawn.

(The preceding Memorandum of Understanding, Paid Leave and LWOP, applies to APWU Transitional Employees.)

\+ + +

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100



Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: H7C-NA-C 61
W. Burrus
Washington, DC 20005

Dear Mr. Burrus:

On January 30, 1990, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether Article 10.6 of the National Agreement authorizes employees to use leave and LWOP simultaneously for short term absences.

It is our position that no national interpretive issue involving the terms and conditions of the National Agreement is fairly presented in this case. However, inasmuch as the union did not agree, the following represents the decision of the Postal Service on the particular fact circumstances involved.

Article 10.6 was added to the National Agreement as a result of the 1987 negotiations. The addition had two specific purposes:

1. To permit employees on extended absence to stretch available leave over a long period of time to keep medical benefit eligibility and Article 6 protection.

2. To forbid employees from using approved leave in conjunction with LWOP for the purpose of receiving holiday pay.

Article 10.6 was not intended to apply to short term absences. The JBC's 1987 proposals and minutes from negotiating sessions confirm this position. Consequently, this grievance must be denied.

Time limits at Step 4 were extended by mutual consent.

Sincerely,

David A. Stanton

David A. Stanton
Grievance & Arbitration
Division

Date_____

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

MAY 4 1988

Mr. Lawrence G. Hutchins
Vice President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

Re: H7C-NA-C 9
M. Biller
Washington, DC 20005

Gentlemen:

On February 9, 1988, David Cybulski and Charles Dudek met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether an employee who is on extended absence and wishes to continue eligibility for health and life insurance benefits, and those protections for which an employee may be eligible under Article 6 of the National Agreement may use sick leave and/or annual leave in conjunction with leave without pay (LWOP) prior to exhausting his/her leave balance.

During our discussions, we mutually agreed that an employee in the above circumstances may use sick leave and/or annual leave in conjunction with LWOP prior to exhausting his/her respective leave balance. In addition, this settlement does not limit management's prerogative to grant leave requests at its discretion according to normal leave approval procedures. Furthermore, the Employer is not obligated to approve such leave for the last hour of the employee's scheduled workday prior to and/or the first hour of the employee's scheduled workday after a holiday.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

David P. Cybulsky
Acting General Manager
Grievance & Arbitration
Division

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

Lawrence G. Hutchins
Vice President
National Association of Letter
Carriers, AFL-CIO

5/4/88
DATED

Forward Header

Subject: Possible settlement of "LWOP approval" arbitration case
Author: THOMAS G. SKOLAK at ININ001L
Date: 4/15/99 10:14 AM

as scary as it gets

Forward Header

Subject: Possible settlement of "LWOP approval" arbitration case
Author: DALE P BIERSTEKER at BLIL002L
Date: 4/14/99 8:32 PM

The following may affect how some of you handle LWOP approvals. Let me know if we need to object.

Forward Header

Subject: Possible settlement of "LWOP approval" arbitration case
Author: WALTER F O'TORMEY at WADC035L
Date: 4/14/99 5:02 PM

Ladies & gentlemen,
Comments or concerns?
Walt

Forward Header

Subject: Possible settlement of "LWOP approval" arbitration case
Author: PATRICIA A HEATH at WADC041L
Date: 4/12/99 3:34 PM

This is to let you know about a possible settlement of an arbitration case scheduled for next Wednesday. April 21 with the APWU in front of Arbitrator Das.

The APWU challenges our ability to require employees to take paid leave instead of leave without pay. The issue as framed by the APWU in the grievance papers is:

... contesting the employer's interpretation of employees' right to

use LWOP in conjunction with annual or sick leave if the leave is approved pursuant to normal leave approval procedures. Supervisors have the authority to approve "leave" for employees' absences, but the parties have negotiated that an employee's decision to use LWOP in compination with sick or annual "leave" is at the employee's discretion if the "leave" [absence] is otherwise approved.

[The USPS] letter includes that the "granting of LWOP is a matter of administrative discretion". In this context, it appears that supervisors may approve the "leave" but deny the use of LWOP. This interpretation is contrary to the parties agreement that provides that "employees may utilize annyal and sick leave in conjunction with leave without pay." Supervisory discretion is the approval or disapproval of the leave and not the specific type of leave.

Based on our discussions this morning, WE PLAN TO SETTLE THE CASE. Jim Shipman, who negotiated the Paid Leave and LWOP MOU in 1990 (now on page 312 of the APWU 1998 Agreement), agrees with the above statements. If we decide to approve the absence, we cannot disapprove LWOP. Nor can we indicate that we will approve SL but not LWOP. To that extent, it appears this case should be settled and we plan to open discussions with the APWU. Be [illegible] you might be interested and wanted to let you know of the possibility now in case you wished to provide input, prior to my contacting the APWU tomorrow.

We believe that annual leave requested under local Memo procedures is an exception, when those procedures apply only to requests for "annual leave." If an office has a 10 person "daily quota" to whom ANNUAL must be granted, an employee cannot request AL as the tenth person and later change to LWOP. Similarly, an employee who selects 15 days of AL for choice vacation, and before the period comes along uses all his AL, would not have an ENTITLEMENT to LWOP instead.

In terms of FMLA, the law indicates that we may require use of paid leave before unpaid leave. However, our contractual agreement to the contrary as noted above would be binding on us, notwithstanding the FMLA provision.

I can be reached at x3813 if you have comments or concerns.

202 842
4297

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

June 13. 1996

William Burrus
Executive Vice President
(202) 842-4246

Dear Tony:

Pursuant to the provisions of Article 15 of the National Agreement this is to initiate a Step 4 grievance protesting the employer's interpretation on the use of LWOP as expressed in your letter of June 10, 1996. The union interprets the provisions of the National Agreement and interpretations by the Department of Labor as limiting the right of the employer to require employees to use leave that has not been earned prior to granting LWOP. By opinion letter released May 12, 1995, Daniel Sweeney, Deputy Assistant Aministrator of the Wage and Hour Division provided an interpretation on this provision "to mean that the employee has both earned the leave and is able to use that leave during the FMLA leave period". The USPS policy as expressed in your June 10, 1996 letter is in conflict with this DOL interpretation.

Your argument that the right of employees to voluntarily use unearned leave somehow balances the employer's improper requirement is specious and not worthy of further comment. As you are clearly aware, the parties have incorporated this right into handbooks and manuals and have a long standing mutually recognized past practice that employees may voluntarily use unearned annual leave.

As a remedy to this violation, the union request that all unearned leave improperly applied to employee FMLA absences be restored and the employer waive collection of payment because of this illegal policy of which the employer had advance knowledge.

Thank you for your attention to this matter.

Sincerely,

William Burrus

William Burrus

Anthony J. Vegliante, Manager
Grievance & Arbitration Division
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

June 13, 1996

Dear Tony:

Pursuant to the provisions of Article 15 of the National Agreement this is to initiate a Step 4 grievance contesting the employers right to require the use of annual leave under the Dependent Care Memorandum. As expressed in my letter of May 22, 1996, provisions of the ELM, Section 513.61 expressly provides that "if sick leave is approved, but the employee does not have sufficient sick leave to cover the absence, the difference is charged to annual leave or to LWOP *at the employee's option*". This is in direct conflict with your response as contained in your June 10, 1996 letter. The option to use LWOP in the above circumstances is at the employee's option.

As a remedy to violations of these provisions, I request that such improperly applied leave be restored to employee balances and any collection of monies paid be waived because of the employer's advance knowledge that the policy was in violation of the rules.

Sincerely,

William Burrus
Executive Vice President

Anthony J. Vegliante, Manager
Grievance & Arbitration Division
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

paid leave of any kind. (Sick leave is not intended to be used to supplement earnings of employees.)

513.422 Minimum Unit Charge

Employee Category	Minimum Unit Charge
All part-time nonexempt employees.	Hundredth of an hour (.01 hour).
Part-time exempt employees.	(See 519.71.)

513.5 Advance Sick Leave

513.51 Policy.

513.511 May Not Exceed 30 Days. Sick leave not to exceed 30 days (240 hours) may be advanced in cases of serious disability or ailments if there is reason to believe the employee will return to duty. Sick leave may be advanced whether or not employees have annual leave to their credit.

513.512 Medical Document Required. Every application for advance sick leave must be supported by medical documentation of the illness.

513.52 Administration.

513.521 Installation Heads' Approval. Officials in charge of installations are authorized to approve these advances without reference to higher authority.

513.522 Forms Forwarded. Form 1221, *Advance Sick Leave Authorization*, is completed and forwarded to the PDC when advance sick leave is authorized.

513.53 Additional Sick Leave.

513.531 30 Day Maximum. Additional sick leave may be advanced even though liquidation of a previous advance has not been completed, provided the advance at no time exceeds 30 days. Any advance sick leave authorized is in addition to the sick leave which has been earned by the employee at the time the advance is authorized.

513.532 Liquidating Advance Sick Leave. The liquidation of advance sick leave is not to be confused with the substitution of annual leave for sick leave to avoid for forfeiture of the annual leave. Advanced sick leave may be liquidated in the following manner:

a. Charging the sick leave against the sick leave earned by the employee as it is earned upon return to duty.

b. Charging the sick leave against an equivalent amount of annual leave, at the employee's request if the annual leave charge is made prior to the time such leave is forfeited because of the leave limitation regulation.

513.6 Leave Charge Adjustments

513.61 Insufficient Sick Leave. If sick leave is approved, but the employee does not have sufficient sick leave to cover the absence, the difference is charged to annual leave or to LWOP at the employee's option.

513.62 Insufficient Sick and Annual Leave. If sick leave is approved for employees who have no annual or sick leave to their credit, the absence may be charged as LWOP unless sick leave is advanced as outlined in 513.5. LWOP so charged cannot thereafter be converted to sick or annual leave.

513.63 Disapproved Sick Leave. If sick leave is disapproved, but the absence is nevertheless warranted, the supervisor may approve, at the employee's option, a charge to annual leave or a charge to LWOP.

513.64 Absence Without Leave. An absence which is disapproved is charged as LWOP and may be administratively considered as AWOL.

513.65 Annual Leave Changed to Sick Leave. If an employee becomes ill while on annual leave and the employee has a sick leave balance, the absence may be charged to sick leave.

513.7 Transfer or Reemployment

513.71 Transfer.

513.711 Crediting. Individuals who are transferring from a federal agency to the USPS are credited with their sick leave balance provided there is not a break in service in excess of 3 years.

513.712 Recrediting

a. If a USPS employee transfers to a position under a different leave system, to which only a part of the employee's sick leave can be transferred, the sick leave is recredited if the individual returns to the USPS provided there is not a break in service in excess of 3 years.

b. If a USPS employee transfers to a position to which sick leave cannot be transferred, the sick leave is recredited if the individual returns to the Postal Service provided there is not a break in service in excess of 3 years.

513.72 Reemployment. Sick leave may be recredited upon reemployment provided there is not a break in service in excess of 3 years.

513.73 Reemployment--OWCP. All individuals who were originally separated and who are subsequently reemployed from a continuous period on OWCP rolls will have any previously unused sick leave recredited to their account, regardless of the length of time the employee was on OWCP and off postal rolls. **Exception:** Sick leave may not be recredited if the employee applied and was approved for disability retirement regardless of whether the employee actually collected the annuity.

513.8 Retirements or Separations

513.81 General. No payment is made for accumulated sick leave when an employee retires or separates.

513.82 Retirement.

513.821 Credit for Sick Leave. Provisions of the Civil Service Retirement law provide for the granting of credit for unused sick leave in calculating retirement or

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

June 10, 1996

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This will serve to respond to your correspondence dated May 7 and 22 requesting the Postal Service position on whether the employer may require an employee to use annual leave that is advanced but not accrued.

Your letter states, "As you are aware, full time employees are advanced annual leave at the beginning of the leave year. The blanket USPS policy of requiring employees to exhaust all leave prior to granting LWOP would require an employee to be charged leave that has not been earned."

There is no blanket policy requiring employees to exhaust all leave prior to granting LWOP. As you have previously been notified, approval of LWOP is at the discretion of the supervisor based on the needs of the employee, the needs of the service and the cost to the service. It follows that in some cases LWOP may be denied while the use of annual leave would be approved. Where an employee has no annual leave, LWOP would not be denied for an otherwise approved absence as long as there is no negative effect on the cost and needs of the service.

Your concern regarding the use of annual leave which has been accrued but not earned appears to be self-serving in this instance. You make no mention of the potential liability accrued by the employer by virtue of advancing annual leave to all full-time employees at the beginning of each year. Many, if not most, employees use annual leave before it is actually earned. You can well imagine the reaction of our employees if we were to change that practice and advise employees that they could only use annual leave on a 'pay-as-you-go' basis. We seriously doubt that this is your intent but it is always useful to look at both sides of the scale.

With regard to your question concerning the provision of Section 513.61of the Employee and Labor Relations Manual, there has been no change to this provision. If there is a particular District or Area where you believe there is a problem with this provision, and you bring it to my attention, I will address it.

If there are any questions concerning this matter, you may contact Curtis Warren of my staff at (202) 268-5359.

Sincerely,

Anthony J. Vegliante
Manager
Contract Administration APWU/NPMHU

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

Employer Cannot Force Substitution of Accrued, but Unavailable Vacation Leave Toward FMLA Leave

An employer cannot force an employee to substitute accrued paid leave that he would not otherwise be entitled to use in the current vacation year toward Family and Medical Leave Act (FMLA) leave, said Daniel Sweeney, the Wage and Hour Division's deputy assistant administrator, in an opinion letter released May 12, 1995.

In this case, the employee was told by his employer that he must substitute vacation leave that he is not yet entitled to use for part of his FMLA leave. The employer's vacation leave plan stipulates that an employee who has worked 800 hours in the current vacation year earns paid vacation leave that may not be used until the next vacation year.

Under §102(d)(2) of the FMLA (Appendix I, page 5), "an employee may elect, or an employer may require the employee, to substitute certain of the accrued paid vacation leave, personal leave, family leave, or sick or medical leave of the employee for the unpaid leave provided under the Act." The Department of Labor (DOL) has interpreted this provision "to mean that the employee has both earned the leave and is able to use that leave during the FMLA leave period," Sweeney said. An employer, therefore, cannot require an employee to use leave that is not yet available to the employee to use under terms of the employer's leave plan, Sweeney stated.

> *An employer cannot require an employee to use leave that is not yet available to the employee to use under terms of the employer's leave plan.*

He said that "the foregoing would neither prevent an employer from voluntarily advancing paid leave to an employee nor an employee from voluntarily accepting such leave during FMLA absence." The FMLA states "nothing in this Act or any amendment made by this Act shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies that comply with the requirements under this Act or any amendment made by the Act" (§403, Appendix I, page 12), Sweeney noted.

Covered Employers Must Comply With Notice Requirements Regardless of Employee Eligibility

Employers that are covered by the Family and Medical Leave Act (FMLA) but do not have eligible employees must still comply with the act's general notice requirements, said Daniel Sweeney, the Department of Labor's Wage and Hour Division deputy assistant administrator, in a May 17, 1995, opinion letter.

The letter suggests that the covered employer is a public agency with fewer than 50 employees. DOL states that all public agencies are covered by the FMLA, regardless of the number of workers they employ (§102, Appendix I, page 4).

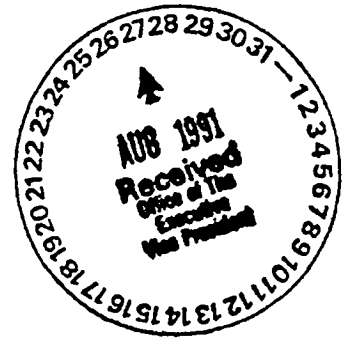
The FMLA requires that all covered employers post in a conspicuous place at the worksite a notice of the act's provisions and information concerning procedures for filing complaints of violations (§109, Appendix I, page 9), Sweeney said. This was emphasized in the preamble to the final rules, which stated that all covered employers must post a notice to inform employees of the FMLA's provisions, regardless of whether the employer has any eligible employees. "This section also notes that there is no authorized exception that relieves covered employers from this notice requirement when they have no eligible employees," Sweeney said.

DOL does not have the option under the act to waive the posting requirements for employers, as suggested by comments to the final rules, Sweeney stated. ✠

UNITED STATES POSTAL SERVICE
ROOM 9014
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
TEL (202) 268-3816
FAX (202) 268-3074

SHERRY A. CAGNOLI
ASSISTANT POSTMASTER GENERAL
LABOR RELATIONS DEPARTMENT

August 26, 1991



Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Mr. Burrus:

This letter is in further response to your July 30 letter concerning modification of PS Form 3971, Request For or Notification of Absence.

The intent of the Memorandum of Understanding relating to paid leave and LWOP is expressly stated in the first sentence of the Memorandum. It was intended only to make clear that supervisors would not disapprove employee requests for LWOP solely because the employee had an annual leave or sick leave balance.

The Memorandum of Understanding did not change any of the existing procedures for requesting leave nor does it require any change in PS Form 3971. The employee still requests the type of leave desired, and the supervisor approves or disapproves the employee's request, but it will not be disapproved solely because the employee has a paid leave balance. However, there may exist other valid reasons why the employee's request for a type of leave may be denied by the supervisor.

There is not, in our opinion, any reason to revise or modify the present PS Form 3971.

Sincerely,

Sherry A. Cagnoli

Sherry A. Cagnoli

MEMORANDUM

The undersigned parties negotiated a Memorandum of Understanding (MOU) entitled "LWOP in Lieu of SL/AL" that allows an employee to request Leave Without Pay (LWOP) prior to exhausting annual or sick leave. The following serves as a guide for administering these newly negotiated MOU provisions.

The basic intent of (in) this MOU is to establish that an employee need not exhaust annual or sick leave prior to requesting LWOP. One example of the term "need not exhaust" is (where) when an employee requests maternity or paternity leave and was previously required by local mamnagement to exhaust their sick or annual leave prior to receiving LWOP. An employee now has the option of requesting LWOP in lieu of sick or annual leave, (when they reach the point where they may "exhaust" their leave benefits).

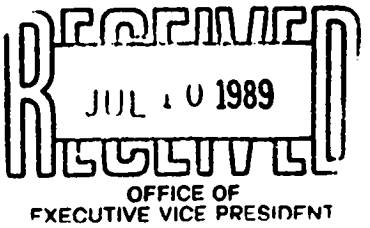
It was not the intent of this MOU to increase leave usage (i.e., approved time off). Moreover, it was not the intent that every or all instances of approved leave be changed to LWOP thus allowing the employee to accumulate a leave balance which would create a "use or lose" situation. Furthermore the employer is not obligated to approve such leave for the last hour of the employee's scheduled workday prior to and/or the first hour of the employee's scheduled workday after a holiday.

This MOU does not change (impact) Local Memoranda of Understanding regarding procedures for prescheduling annual leave for choice or nonchoice vacation periods. It also was not intended to provide employees the opportunity to preschedule LWOP in lieu of annual leave for choice or nonchoice periods. (or increase leave usage. An employee may at a later date request to change the prescheduled annual leave to LWOP, subject to supervisor approval in accordance with normal leave approval procedures. however, this option is available to an employee only if they are at the point of exhausting their annual leave balance and the employee must provide evidence of such to their supervisor at the time of the leave request (e.g., pay stub)).

This MOU does not establish a (there is no) priority between incidental requests for annual leave or LWOP when several employees are simultaneously requesting such leave. The normal established local practice prevails, i.e., whether leave requests are approved in order of seniority or on a first come first serve basis or other local procedure. This memorandum of understanding has no effect on any other leave provisions contained in the Employee and Labor Relations Manual or other applicable manuals and handbooks other than specified by its specific terms.

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

JUL 3 1989



Mr. William Burrus
Executive Vice-President,
American Postal Workers Union,
AFL-CIO
1300 L Street, NW,
Washington, DC 20005-4107

Dear Bill:

This is in response to your June 5, 1989 letter regarding the use of incremental leave in conjunction with leave without pay (LWOP) for short-term absences.

As you will recall, the language in question had its genesis as a union proposal during 1987 negotiations. Its purpose was to draw attention to an already existing regulation and to permit those employees on extended absence to stretch their available leave over a longer period so as not to endanger their health benefits eligibility or their Article 6 protection. The language also emphasized the agreement reached in a Step 4 settlement (H1C-3W-C 13620) which forbade the use of approved leave in conjunction with leave without pay (LWOP) in order to receive holiday pay.

The application of this language to short-term absences was never intended by the U.S. Postal Service and was only discussed in relation to the aforementioned holiday pay scenario. In every case, the requested leave is subject to the normal leave approval procedures. Therefore, we are not in agreement with your position that the provisions of Article 10, Section 6, would be applicable to short-term leave.

I trust this sufficiently responds to your inquiry.

Sincerely,

Joseph J. Mahon, Jr.
Assistant Postmaster General

American Postal Workers Union, AFL-CIO
1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

October 21, 1987

Dear Mr. Fritsch:

In the meeting of October 19, 1987 between the unions (APWU/NALC) and the Postal Service the parties discussed the "minimum charge" for leave newly negotiated in the 1987 National Agreement.

It is our understanding of the USPS' position that employees may be required to exhaust their leave balance (sick and/or annual) prior to approving LWOP for approved absences.

The unions interpret the provisions of Article 10 as permitting employees to utilize annual and sick leave in conjunction with leave without pay prior to exhausting the appropriate leave balance subject only to the employers approval of the absence.

In accordance with the provisions of Article 15 of the 1987 National Agreement this is to initiate the issue as a interpretive dispute at step 4 of the grievance procedure.

Please respond as to the employers interpretation at your earliest convenience.

Sincerely,

William Burrus
Executive Vice President

Tom Fritsch
Labor Relations Department
U.S. Postal Service
475 L'Enfant Plaza, SW
Washington, D.C. 20260-4100

WB:rb

American Postal Workers Union, AFL-CIO
1300 L Street, NW, Washington, DC 20005

June 5, 1989

William Burrus
Executive Vice President
(202) 842-4246

Dear Mr. Mahon:

Pursuant to the provisions of Article 15 of the National Agreement, this letter is to initiate a question to determine if the parties disagree on an issue of major importance.

The 1987 National Agreement contains new language at Article 10 providing that employees may "utilize annual and sick leave in conjunction with leave without pay." The parties previously agreed that this language permits employees on extended absences to use LWOP without exhausting their leave balance. However, managers are refusing to apply the contractual language to short term absences. In some divisions managers have issued blanket policies that LWOP is to be automatically denied, although I assume that they intend to comply with the step 4 settlement on extended absences.

The parties in negotiations did not agree that the referenced language applied only to extended absences and the subject was fully explored as to the Union's intent. We would now like to determine whether or not the USPS is in agreement that an employee may utilize leave in conjunction with LWOP for short term absences, subject to the leave approval procedures.

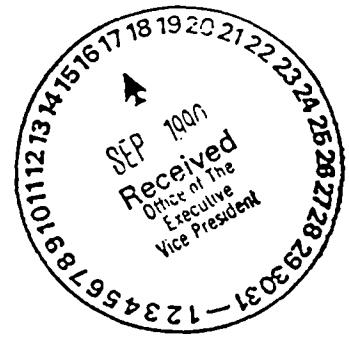
Your attention and an early reply is requested on this issue.

Sincerely,

William Burrus
Executive Vice President

Joseph J. Mahon, Jr.
Asst. Postmaster General
U.S. Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100



Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: H7C-NA-C 61
W. Burrus
Washington, DC 20005

Dear Mr. Burrus:

On January 30, 1990, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether Article 10.6 of the National Agreement authorizes employees to use leave and LWOP simultaneously for short term absences.

It is our position that no national interpretive issue involving the terms and conditions of the National Agreement is fairly presented in this case. However, inasmuch as the union did not agree, the following represents the decision of the Postal Service on the particular fact circumstances involved.

Article 10.6 was added to the National Agreement as a result of the 1987 negotiations. The addition had two specific purposes:

1. To permit employees on extended absence to stretch available leave over a long period of time to keep medical benefit eligibility and Article 6 protection.

2. To forbid employees from using approved leave in conjunction with LWOP for the purpose of receiving holiday pay.

Article 10.6 was not intended to apply to short term absences. The JBC's 1987 proposals and minutes from negotiating sessions confirm this position. Consequently, this grievance must be denied.

Time limits at Step 4 were extended by mutual consent.

Sincerely,

David A. Stanton
Grievance & Arbitration
Division

Date_____

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

MAY 21 1974

Mr. James H. Rademacher, President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001

865A73

Re: Glenn Sparrow
Chapel Hill, NC
NB-S-1129(N-8)/3SR-317

Dear Mr. Rademacher:

On April 18, 1974, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure. Time limits for resolving this grievance were extended by mutual agreement.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

It is our position that neither sick leave nor leave without pay can be charged against an employee unless requested by that employee. The evidence available indicates that only 4 of the 82 employees scheduled to report on the day in question were detained because of the snowstorm. Thus, the provisions for granting administrative leave do not apply in this situation. To resolve this case management is directed to review the grievant's time records, and to correct those records to reflect emergency annual leave for the hours in question. We note that management has indicated its intention to assure that no sick leave will be charged to the grievant for the hours in question.

Sincerely,

Peter A. Genereux
Labor Relations Department

July 30, 1991

Dear Ms. Cagnoli:

The 1990 Arbitrated Contract provides new provisions for the use of leave, permitting the use of LWOP at the employee's discretion. The only way to give any meaning to these new provisions is to modify PS Form 3891 that the employee's request for leave or LWOP occurs after the absence has been approved. The supervisor's decision to grant the request to be absent should not be colored by the leave used.

This was the parties intent in agreeing to the revised language. It would be made meaningless, if the approval is based on whether or not leave is requested.

This is to request your immediate attention to this issue.

Yours in union solidarity,

William Burrus
Executive Vice President

Sherry A. Cagnoli
Asst. Postmaster General
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

WB:rb

American Postal Workers Union, AFL-CIO
1300 L Street, NW, Washington, DC 20005

September 6, 1991

William Burrus
Executive Vice President
(202) 842-4246

Dear Mr. Downes:

The enclosed memorandum, as amended, would be acceptable to APWU as clarification of the new language of Article 10.

An explanation of the changes that I made are as follows:

Paragraph 2 - First sentence: proper sentence structure only

Last sentence: Expands on language of the Agreement

Paragraph 3 - First sentence, grammatical correction only

Second sentence: (or increase leave usage) repeated in prior paragraph

Third sentence: This application was not discussed in negotations and although it may be permitted should not be included as clarification.

Paragraph 5 - Grammatical change only

Your attention of this matter is appreciated.

Sincerely,

William Burrus
Executive Vice President

William Downes
Director, Office of Contract Administration
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

WB:rb

****

In the Matter of the National Arbitration Between

UNITED STATES POSTAL SERVICE (USPS)	)	
and	)	W4N-5H-C-40995 (Placerville, NC)
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO (NALC)	)	and
and	)	S1N-3P-C-41285 (Cary, NC)
NATIONAL RURAL LETTER CARRIERS' ASSOCIATION (NRLCA) (NRLCA)	)	City/Rural Jurisdictional Issues

****

Before: Dennis R. Nolan, Arbitrator, School of Law, University of South Carolina, Columbia, SC 29208-0001.

Appearances:

For the Employer: Kevin B. Rachel, Labor Relations Counsel, Washington, DC.

For the NALC: Keith E. Secular, Cohen, Weiss and Simon, New York, NY.

For the NRLCA: William B. Peer, Peer & Gan LLP, Washington, DC.

Place of Hearing: Washington, D.C.

Date of Hearing: July 14, 1998

Date of Award: December 23, 1998

OPINION

I. Statement of the Case.

This arbitration proceeding involves what must be two of the oldest pending grievances in the USPS dispute resolution system. The NALC filed Grievance No. S1N-3P-C-41285 (Cary, NC) on August 21, 1984 and Grievance No. W4N-5H-C-40995 (Placerville, CA) on January 29, 1987 to challenge the Postal Service's shifting of certain deliveries from city to rural delivery service. (In the Placerville incident, the Employer also changed certain deliveries from rural to city delivery, but the grievance did not challenge that shift.) The Union certified the cases for arbitration on November 16, 1988 (Cary) and July 18, 1989 (Placerville). Rather than proceed to arbitration, however, the parties, joined by the NRLCA, engaged in extended discussions and other proceedings.

The delay in processing these grievances was due in large part to the existence of many other NALC grievances presenting the same general issue. In each instance the Employer shifted certain deliveries from city to rural service, prompting protests from the NALC. Because the problem was widespread and recurring, and because it involved the interests of both unions as well as those of the Employer, the three parties decided to establish a separate arbitration forum to deal exclusively with jurisdictional conflicts between the NALC and NRLCA. The parties then chose as test cases the Cary and Placerville grievances from the many waiting arbitration. Their hope is that the parties themselves will be able to apply the principles announced in these cases to settle the remaining grievances. If that proves impossible, they will then proceed to arbitrate other grievances.

The arbitration hearing took place in Washington, DC on July 14, 1998. The parties appeared and had full opportunity to testify, to examine and cross-examine witnesses, and to present all pertinent evidence. In addition to the voluminous documentary evidence, the parties submitted substantial briefs and more modest reply briefs. The last of these briefs arrived on November 10, 1998.

II. Statement of the Facts.

Because the facts bearing on the general question of city-to-rural conversions are so closely tied to the merits of the case, I will discuss them in Part VII. For the moment it will suffice to sketch the background of the two grievances the parties have chosen to use as proxies for their broader disputes. The parties decided not to delve into many specifics about the Cary and Placerville grievances. The NALC in particular agreed at the hearing only to proceed on questions of principle while reserving its right to raise certain factual and procedural issues peculiar to these grievances. For example, while accepting for the sake of argument Management's stated reasons for making the Cary and Placerville adjustments, the NALC notes its disagreement with the Postal

Service as to whether the Placerville changes actually clarified boundaries and about the most convenient placement for the disputed Cary deliveries. Accordingly, the facts stated below provide only a brief outline.

The first grievance arose in Cary, North Carolina, a suburb of Raleigh. Following the annexation of a subdivision by the City of Cary and in response to customer requests, the Postal Service in 1984 transferred 244 deliveries (136 city deliveries and 108 rural deliveries) from the Raleigh Post Office to the Cary Post Office. All 244 were added to a Cary rural route as an extension of that route's territory rather than to a Cary city route. Because its members lost 136 deliveries and gained none in return, the NALC grieved. The 136 deliveries represented only 20-25% of any city route. So far as the record shows, the Postal Service made the switch purely for operational reasons.

The second grievance arose in Placerville, California. Early in 1987, the Postal Service exchanged territory between rural and city deliveries to establish clearer boundaries, avoid commingling, and relieve overburdened city routes. Again, so far as the record shows, the Postal Service made the changes purely for operational reasons. As in Cary, the NRLCA gained more deliveries (455) than the NALC (238), so the NALC grieved the change.

The two cases were similar in many respects. In both, the city routes had long been delivered by city carriers; in neither did the Postal Service negotiate the changes before implementing them; and in both the NALC sought reconversion and compensation for the affected City Carrier Craft. Needless to say, in neither case did the NALC agree to the conversions.

III. The Issue.

The specific issue applicable to these grievances is this: did the Postal Service violate any controlling authority by converting certain deliveries in Cary, North Carolina and Placerville, California from city to rural? If so, what shall the remedy be? Beyond this narrow issue, the parties have presented a broader question: to what extent and under what circumstances may the Postal Service convert city deliveries to rural deliveries?

IV. Pertinent Authorities.

Of all the arguably controlling and persuasive authorities, just a few are accepted as relevant by all three parties. In the case of precedential arbitration awards, a few sentences or paragraphs distill the essence. Because it would be impossible to decide any jurisdictional grievance without referring to these authorities, and because it would be impossible to understand a jurisdictional arbitration award without reading the the cited authorities, I shall quote them in pertinent part.

A. USPS/NALC 1994-1998 Collective Bargaining Agreement (Joint Ex. 2)

ARTICLE 1
UNION RECOGNITION

Section 1. Union

The Employer recognizes the National Association of Letter Carriers, AFL-CIO as the exclusive bargaining representative of all employees in the bargaining unit for which it has been recognized and certified at the national level — City Letter Carriers.

ARTICLE 3
MANAGEMENT RIGHTS

The Employer shall have the exclusive rights, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees of the Employer in the performance of official duties; . . .

C. To maintain the efficiency of the operations entrusted to it;

D. To determine the methods, means, and personnel by which such operations are to be conducted; . . .

ARTICLE 7
EMPLOYEE CLASSIFICATIONS

Section 2. Employment and Work Assignments

A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken:

1. All available work within each separate craft by tour has been combined.

2. Work of different crafts in the same wage level by tour has been combined.

The appropriate representatives of the affected Unions will be informed in advance of the reasons for establishing the combination full-time assignments within different crafts in accordance with this Article.

ARTICLE 19
HANDBOOKS AND MANUALS

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, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. . . .

B. USPS/NRLCA 1995-1999 Collective Bargaining Agreement (Joint Ex. 1)

[Articles 1, 3, and 19 of the USPS/NRLCA Agreement are identical in relevant respects to the same-numbered provisions of the USPS/NALC contract quoted above. The USPS/NRLCA Agreement does not contain a counterpart to the USPS/NALC contract's Article 7.]

C. USPS/APWU/NPOMH/NALC/NRLCA Memorandum of Understanding on Jurisdictional Disputes, September 4, 1975 (NALC Ex. 13)

> . . . In order to resolve [jurisdictional] disputes the parties agree that a standing national level Committee on Jurisdiction, comprised of representatives of each party, shall be established to identify and resolve such current and any future jurisdictional disputes. . . .
>
> . . . In resolving disputed assignments, the Committee shall consider, among other relevant factors, the following:
>
> 1. existing work assignment practices;
>
> 2. manpower costs;
>
> 3. avoidance of duplication of effort and "make work" assignments;
>
> 4. effective utilization of manpower, including the Postal Service's need to assign employees across craft lines on a temporary basis;
>
> 5. the integral nature of all duties which comprise a normal duty assignment;
>
> 6. the contractual and legal obligations and requirements of the parties. . . .

D. Postal Operations Manual (USPS Ex. 9)

611.3 Conversions

.32 Rural Delivery to Other Delivery Service

.321 As a general rule, conversions from rural to city delivery shall be considered only to

a. Provide relief for overburdened rural routes when all other alternatives are impractical.

b. Establish clear cut boundaries between rural and city delivery territory and eliminate overlapping and commingling of service.

c. Provide adequate service to highly industrial areas or apartment house complexes on rural routes.

d. Provide service to areas where city delivery service will be more cost effective. Divisional review is required when cost is the basis for conversion.

E. Postal Operations Manual, August 1, 1996 Additions (USPS Exhibit 5)

64 City Delivery Service

644 Conversions

644.1 Definitions

In this section, *conversion* refers to replacement of city service with rural delivery service. Any conversion of city delivery territory must be approved by the district manager.

644.2 Conversion of City Delivery Service to Rural Delivery Service

As a general rule, conversions from city delivery to rural delivery service shall be considered only for the following reasons:

a. To establish clear-cut boundaries between city, rural, and highway contract delivery territory and eliminate overlapping and commingling of service.

b. To restore reasonable operating efficiency where pockets of delivery area become separated due to some physical change that is expected to be permanent (e.g., construction of a dam or limited access highway, elimination of a bridge, etc.).

c. To accommodate municipal or community identity preferences where the post office gaining the delivery territory does not have city delivery service and the carrier casing and delivery workload

to be transferred is less than the minimum scheduling requirement for an auxiliary city route.

F. Other Authorities

1. USPS/NALC Arbitration Award, N-C-4120 (Sioux Falls, SD), Sylvester Garrett, Impartial Chairman, August 30, 1974 (NALC Ex. 10)

Article VII, Section 2-A itself must be read in the context of the entire National Agreement, and of the collective bargaining relationships which have existed in the Postal Service since the early 1960's. At first blush, two basic propositions emerge from this provision:

(1) Normally work in different crafts will not be combined into one job, and

(2) full-time or part-time scheduled assignments may be established to include work within different crafts "in order to maximize full-time employment opportunities and provide necessary flexibility," but only after "studied effort" by Management to meet its requirements "by combining within craft or occupational groups." . . .

[Management's arguments] overlook the consistent treatment of the City and Rural Carriers as separate "crafts" for purposes of collective bargaining. While their work in many instances may be virtually identical, this in no way can detract from the dominant fact that these two groups have been deemed to be separate "crafts" for many years, both in law and in practice. Article VII, Section 2-A, cannot be interpreted properly except in light of this firmly established meaning of the words "craft" and "crafts" as used therein. This meaning thus does not lie in any abstract definition of either "craft." It can only be found in established practice in each Post Office in assigning work to one or the other of the craft bargaining units. If this interpretation somewhat limits the flexibility of Management to transfer work from City to Rural Carriers (and thus to change the type of service provided in given areas) it nonetheless is inescapable when Article VII, Section 2-A is read in the context in which it was written. Moreover, the basic policy thus reflected in this provision may well be essential to the maintenance of sound relationships between the Postal Service and the various Unions involved, as well as among the Unions themselves.

Although Article VII, Section 2-A, therefore must control here, the manner of its application is not free from difficulty. The Union appears to suggest that no work, under any circumstances, may be reassigned from City Carriers to Rural Carriers. It emphasizes that Article VII, Section 4, makes clear that none of Article VII applies to Rural Carriers, and seemingly would imply from this that no work may be assigned to Rural Carriers under Article VII, Section 2-A. This argument possibly may rest on an erroneous belief that Article VII, Section 2-A, constitutes a grant of authority to Management. It does not.

Instead, it places a limitation upon the exercise of Management authority defined under Article III. Thus Management retains full discretion to deal with matters covered by Article VII, Section 2-A, except to the extent limited by the reasonable meaning of that provision.

[Pp. 16-18; emphasis in original.]

2. USPS/NPOMH/APWU Arbitration Award, AW-NAT-5753, A-NAT-2964, and A-NAT-5740 (West Coast), Sylvester Garrett, Impartial Chairman, April 2, 1975 (NALC Ex. 12)

[Reaffirming his Sioux Falls decision, Arbitrator Garrett states that since the National Agreement reflects] a clear intent by all parties to protect the basic integrity of the existing separate craft units as of the time the 1971 National Agreement was negotiated, the Impartial Chairman must find that Article I, Section 1 bars the transfer of existing regular work assignments from one national craft bargaining unit to another (absent any change in conditions affecting the nature of such regular work assignments), except in conformity with Article VII. [P. 48]

It should be understood, however, that the present rulings in no sense restrict Postal Service discretion to realign job duties, to make temporary assignments, to create new positions, or to establish additional full-time schedule assignments which include work within different crafts, as long as such actions are in conformity with all relevant provisions of the National Agreement, including Article I, Section 5; Article III; and Article VII. [P. 60]

3. June 9, 1975 Memorandum from David H. Charters, Director of the USPS Office of Grievance Procedures, to Regional Labor Relations Directors, stating the views of the USPS, NALC, and Arbitrator Garrett on the Arbitrator's Sioux Falls Decision (NALC Ex. 11)

[After a meeting between Charters, NALC President Rademacher, and Arbitrator Garrett] a basic premise emerged to the effect that no significant amount of work that has traditionally been done by city letter carriers may be transferred to rural carriers (absent a material change in the nature of the work) except through the provisions of Article VII, Section 2.A. . . .

The obligations under Article VII, 2.A. are somewhat different in the 1971 and 1973 Agreements, but each Agreement requires certain specific steps to be taken before a combination job may be created, and therefore before work may be transferred from city carriers to rural carriers. In none of the outstanding cases was there any attempt to follow these steps properly. Service improvements, efficiency, or cost are, under the Agreement, not legitimate factors for consideration in making determinations of this nature.

It is impossible to spell out with any degree of specificity the definitions of such words as "significant," "traditionally," and "material." Suffice it to say that good judgment should be used, and each case must be handled individually upon its own merits, in accordance with the general principles set forth in the second paragraph. . . .

Although the Agreement does not specifically address the subject, I believe that if changes from city to rural service appear operationally advisable, for example to square off boundaries for scheme simplification purposes, such changes may be accomplished through exchanges of territory provided there is no significant net transfer of stops from city carriers to rural carriers, and also provided that both the NALC and NRLCA locals agree to the changes.

[Emphasis in original.]

4. USPS/NALC Arbitration Award, NC-NAT-1576 (Miami/Hollywood, FL), Sylvester Garrett, Impartial Chairman, January 17, 1977 (USPS Ex. 7)

[In a grievance involving a jurisdictional dispute between the NALC and APWU over the practice of mail clerks performing "direct hold-outs," Arbitrator Garrett distinguished his West Coast decision as involving transfer of entire bid assignments from one craft to another. The Miami/Hollywood case, he said, "involves only a minor reassignment of work." Article I must be interpreted "in he context in which it was negotiated," and that included "not only . . . the history of collective bargaining on a craft basis, but also a long history of day-to-day administration of the Postal Service, as embodied in various Manuals." Existing manuals expressly authorized the use of "directs" and "special listings."]

There is no basis, against this background, to find an implied obligation under Article I, Section 1 which would preclude the Postal Service from continuing to apply such a long established technique for improving the efficiency of its operations, even if a realignment of duties among the various crafts may result. [Pp. 20-22, emphasis in original]

5. USPS/NALC/NRLCA Arbitration Award, H7N-NA-C 42 (Oakton/Vienna, Virginia), Richard Mittenthal and Nicholas A. Zumas, Arbitrators, August 1, 1994 (NALC Ex. 29)

[Although Arbitrator Garrett's West Coast award did not involve either the NALC or the NRLCA], these unions were, as of April 1975, parties to the same National Agreement as the Mail Handlers and APWU. Garrett's interpretation of Article I, Section 1 is a controlling precedent for all four unions as well as the Postal Service. [P. 39]

We believe, moreover, that Garrett's view of the history and purpose of Article 1, Section 1 is correct. It follows that the unions may properly invoke this provision to "protect the basic integrity" of their respective "separate craft units. . ." NALC has a right to protect its craft jurisdiction; NRLCA has the same right to protect its craft jurisdiction. Article 1, Section 1, to repeat, "bars the transfer of existing regular work assignments from one national craft bargaining unit to another (absent any change in conditions affecting the nature of such regular assignments). . ." Or, to express the point somewhat differently, "existing regular work assignments" must ordinarily remain within the craft to which they have customarily been assigned. An exception is appropriate in those circumstances where the character of such "work assignments" has changed to such an extent that they can no longer fairly be said to constitute "work . . ." of the original craft. [P. 40]

The core of [Arbitrator Garrett's Sioux Falls] ruling is that the jurisdiction of a "craft" is to be determined by the "established practice in each given Post Office in assigning work. . ." From the standpoint of jurisdiction, the customary way of doing things becomes the contractually correct way of doing things. Work always performed by rural carriers in a given area is presumptively within NRLCA's jurisdiction just as work always performed by city carriers in a given area is presumptively within NALC's jurisdiction. This heavy reliance on "practice" was a means of insuring the stability of each craft bargaining unit. [P. 42]

In assessing the significance to be attached to the development of a rural area, one must also consider the Postal Operations Manual (POM). The POM is one of the "handbooks, manuals and published regulations of the Postal Service. . . ." As such, it is binding on the parties under Article 19 of their respective National Agreements insofar as it relates to "wages, hours or working conditions. . . ." [P. 48]

[After quoting POM Sections 611.31 and 611.32, the arbitrators conclude that] Management may "consider" conversion from rural to city delivery when any of the matters set forth in Section 611.321 are present. . . . Nowhere does the POM state what the outcome of that "consider[ation]" should be. The plain implication is that Management is free to make whatever decision it wishes. . . . A careful reading of the POM clearly shows that Management is to have a large measure of discretion on this subject. [P. 50]

The managerial freedom acknowledged by these regulations and incorporated in the National Agreements through Article 19 cannot be ignored. This does not mean that Article 1, Section 1 jurisdictional rights do not exist or that a clear violation of such rights could not in appropriate circumstances call for a conversion from rural to city delivery notwithstanding the POM regulations. Our ruling simply is that where, as here, jurisdictional lines are blurred by the long-standing overlapping duties and working conditions of rural and city carriers, the regulations can properly be invoked to help

determine jurisdictions and to better understand what significance, if any, to attach to a "fully developed" area. [Pp. 51-52]

[Arbitrator Garrett's principle that the meaning of "craft" can only be found in established practices is correct because] given the maturity that characterizes the collective bargaining relationships of these parties, the customary way of doing things is the most realistic guide to jurisdiction. We accept this concept also because it does leave room for legitimate jurisdictional challenges when work is changed to such an extent that the "established practice" can no longer be said to have persuasive force. [P. 52]

The Garrett awards in 1974 and 1975 recognized that there are jurisdictional lines between the several crafts, that Article 1, Section 1 grants each craft union the right to protect its jurisdiction, and that "established practice" is the most reliable guide in defining jurisdiction. Neither in these awards, nor in any subsequent awards, has any attempt been made to translate these generalities into objective criteria for distinguishing one craft from another. The practical difficulties in formulating such criteria should be obvious. These difficulties are even more pronounced when dealing with two crafts, such as rural carriers and city carriers, whose work overlaps in so many ways.

[To set objective criteria] would be unwise not just because of what occurred in the 1981 negotiations but, more important, because the arbitrators have only a limited knowledge of the detailed work assignments for these crafts on a national basis. It would be highly mischievous to establish such criteria without any clear idea as to what their probable impact on the crafts would be. Such complex matters are best left to the bargaining table. [Pp. 54-55]

6. USPS/APWU/NPOMH Arbitration Award, AD-NAT-1311, Howard Gamser, Arbitrator, October 13, 1981 (USPS Ex. 6)

In weighing the merits of the contentions raised by the APWU, the Arbitrator was guided principally by the criteria established in the Memorandum of Understanding [NALC Ex. 13], which are set forth above, as well as by the other considerations voiced by the arbitrators who decided earlier jurisdictional disputes between these same parties. Furthermore, the changes which have taken place in mail processing in the postal service in the relatively recent past also had to be taken into consideration in order to realistically appraise the compliance by the Postal Service with the criteria mentioned above in its determinations made in publishing and implementing Regional Instruction No. 399 in the manner protested by the APWU.

There is no question that with the passage of the Postal Reorganization Act, as the USPS pointed out, Congress decreed that greater emphasis on efficiency and economy would have to be exhibited by management. To that end, management was charged by the

Congress with the responsibility for reviewing all postal service operations to promote greater efficiency and more expeditious mail handling.

At the same time, perhaps spurred on by postal reorganization legislation, there have been dramatic and far reaching changes adopted in the actual mail distribution process. . . . [P. 8]

[In contrast to the situation in Arbitrator Garrett's West Coast decision, where certain work assignments were unilaterally transferred from one craft to another, in this case] each of the disputed assignments were being performed by Mail Handlers as well as Clerks at various facilities throughout the Country. Additionally, . . . the assignments made in Regional Instruction No. 399 are "primary" assignments only. There is no entitlement bestowed upon either the Clerks nor the Mail Handlers to perform each of these operations at every facility. No employee presently performing any of the disputed operations of functions is to be replaced except by attrition. No hard and fast demarcations have been made. No wholesale dislocations or reassignments of functions or operations is contemplated.

It must also be noted that the Garrett Award did provide that changed conditions could bring about changes in assignments. As was discussed earlier in this Opinion, revolutionary changes in the process of mail handling have been experienced. Regional Instruction No. 399 has reacted to those changes on a national basis by a reevaluation of previous functional assignments in a very limited way. Craft lines have not been obliterated or ignored. They have been recast in a formal writing to reflect changes in practice, which have evolved over the period of the past several years, which were responsive to the technological and other operational changes which have been instituted by management to move the mail more efficiently and effectively.

7. USPS/NALC Arbitration Award, S1N-3W-C 18751 (Venice, FL), J. Fred Holly, Arbitrator, December 5, 1983 (NALC Ex. 44)

The POM does not deal specifically with conversions from city to rural delivery. Instead, it deals exclusively with conversions from city to rural delivery. Despite this, however, it is logical that the same criteria would apply in either event. [P. 8]

8. USPS/NALC Arbitration Award, S1N-3W-C-33880 (West Palm Beach, FL), J. Earl Williams, Arbitrator, August 29, 1985 (NALC Ex. 45)

The Arbitrator also agrees with Arbitrator Holly when he concluded that, despite the fact that the POM deals exclusively with conversions from rural to city delivery, it is logical that, unless clearly impractical, the same criteria would apply either way. [P. 12]

9. USPS/NALC Arbitration Award, S1N-3Q-C-25242 (Florence/Richland, MS), P. M. Williams, Arbitrator, November 6, 1987 (USPS Ex. 10)

. . . The undersigned does not disagree with Dr. Holly's observation of it being logical that the criteria should be the same whether the conversion was from rural to city delivery or vice versa. But it seems to him that the proper test is not whether the latter situation is logical, rather the test is whether the parties have intended that conversions from city to rural delivery are within the province of the POM? If they did then Dr. Holly's reasoning was correct; however, if they did not then while he may have reached the right result from applying the facts before him to §610 and §630 his authority to do so is questionable at best, and lacking at worst. . . .

[Posing the question as to whether the POM's omission of city-to-rural conversions was an oversight, Arbitrator Williams] is not inclined to believe it was oversight because the parties at the national level are too sophisticated to have allowed that to happened [*sic*]. He therefore assumes it was a conscious effort on their part to not include it in the POM. . . .

[He believes the party excluded that topic] because the parties understood the remoteness of the possibility to not warrant their spending a great deal of time trying to agree upon what they would do should the situation arise. Moreover, if one did arise and the Employer believed it should make a change — as it did here — it could exercise its rights as retained in Article 3 to make it. . . . [Pp. 5-6]

[Because the POM provisions do not apply to city-to-rural conversions], in order to prevent the Employer from doing as it did in this case the Union has the obligation to point to language in the [National Agreement] or the manuals to support its position. It has relied on §610 and §630 to support its position. But it must agree the language there is silent on this kind of a "conversion". . . .

If [the Union] can make such a showing the grievance should be sustained. However if it cannot show either by clear language in the POM or by a past practice in the relationship of the parties on matters such as this its grievance must be denied.

The undersigned is of the opinion, and so finds, the POM simply does not cover the situation at hand. And despite Dr. Holly's observation that logic directs one to conclude it should be included there he is not persuaded that such inclusion was intended by the parties.

Finding nothing in the NA or the POM to support the Union's claim he is constrained to find that the grievance should be denied. [P. 7]

V. The Parties' Positions.

Part VII discusses the detailed arguments made by the parties. To avoid duplication, I will therefore limit this section to very brief statements of the parties' broadest arguments.

A. The USPS's Position.

The essence of the Postal Service's position in this case is that, under the governing authorities, it may convert deliveries from city to rural service so long as it does not transfer whole bid assignments and so long as it acts for legitimate operational reasons such as squaring off boundaries, eliminating commingling, and improving efficiency. The one thing that the authorities agree on is that the Employer has some right to transfer some work for good reasons. This is a far fairer position than the NALC's attempt to ban all work transfers.

B. The NALC's Position.

The NALC argues that the Postal Service's authority is far more limited. Under the Agreement, the relevant National awards, and the Charters memorandum, the Postal Service may convert deliveries from city to rural service only when there is no net change in deliveries between the affected unions and only when both local unions agree. The NALC therefore asks for a ruling that Management's justifications for the Cary and Placerville conversions are facially invalid. It asks that the grievances be remanded to the parties for further discussion and possible arbitration of procedural and remedial issues.

C. The NRLCA's Position.

The NRLCA's primary argument is that the Oakton/Vienna award controls the outcome of this case. If it is necessary to go beyond that argument, the NRLCA challenges the NALC's denial of any residual management prerogative; asserts that the Garrett awards and the Charters memorandum do not control this case; claims that under standard principles of contract law, the NALC's conduct and the parties' course of dealings and course of performance have modified the collective bargaining provisions on which the NALC now relies; and maintains that the doctrine of laches bars the NALC's grievances.

VI. Discussion.

A. Introduction

Stripped to its core, this dispute concerns the Postal Service's desire for the freedom to change some deliveries from city to rural to achieve operational efficiencies such as neater geographical divisions and lower costs. For the moment, the NALC opposes the Postal Service's objective while the NRLCA supports it. Naturally the unions' positions reverse when the Postal Service uses efficiency as a justification for switching deliveries from rural to city. These

grievances involve only city-to-rural conversions, so this opinion covers only those situations. Different considerations, in particular past practices and POM provisions, may apply to the more common case of rural-to-city conversions.

Resolving these disputes has been a difficult chore for arbitrators because there is no clear controlling authority. The governing statute, regulations, contracts, and precedents recognize the principle of craft integrity but also recognize that there are no sharp lines between the crafts. Changes in demographic patterns over the last few decades have exacerbated jurisdictional conflicts between the two crafts involved in this case, the city and rural carriers. Earlier in this century the differences between them were marked: city was city, rural was rural, and rarely did the twain meet. As cities produced suburbs and suburbs swallowed farmland, the twain did meet, often and everywhere. Not only did cities poach on rural areas, the nature of the work performed by both crafts changed. Where city carriers were assigned to thinly-settled suburban areas, they had to become more mobile to reach delivery sites. Where rural carriers found themselves covering newly-sprouted developments, they had to dismount.

The result, as all parties recognize, was that it has become impossible to distinguish carrier craft jurisdictions either by settlement density or by the methods of performing the work. What remains is a struggle over turf rather than principle. That is a purely factual observation, not a judgmental one. As long as the carrier unions remain legally separate, each will necessarily protect current jobs and seek new ones. Moreover, in the absence of clear dictates from Congress, there is no simple way to decide in any given case which union's members have the right to perform the work. The three parties largely accept certain general principles but differ whenever the Postal Service or an arbitrator tries to give those principles concrete application.

Indeed, the futility of translating principle into practice drives some to avoid the effort. In the Oakton/Vienna case, for example, two of the best arbitrators in the country were compelled to describe attempts to establish objective criteria as "highly mischievous" because arbitrators could not possibly predict the impact the criteria would have in other locations. As a result, the most that any arbitrator can do is to state or restate the general principles and then apply them to the instant grievances. If they perform that task well, their decisions should help the parties resolve some other pending disputes. If they do it poorly, their decisions may only invite more grievances. Ultimate answers to complex questions, as Arbitrators Mittenthal and Zumas recognized, "are best left to the bargaining table." Any jurisdictional arbitration award will therefore be but one step on what promises to be a very long road.

B. Background

1. Conversions in General

As cities expanded into formerly rural territory, there was a widespread assumption that mail deliveries, like other aspects of the newly developed regions, would be absorbed by the encroaching city. That is the way most of the changes went, and that is what the Postal Service's

first regulations and instructions on conversions between crafts covered. The problem with that approach, from the NRLCA's view, is that it operates like a ratchet: the NALC would always gain deliveries at the expense of the NRLCA. The NRLCA's predictions (in its brief at 38) that the NALC's position would cause the NRLCA to "wither and die" and would bring about "the potential end of rural delivery in America" are overwrought, but it is undeniable that the number of rural carriers would shrink with their territory, like the wolf and the moose. Accordingly, the NRLCA vigorously challenges most rural-to-city shifts.

From the NALC's point of view, however, merely leaving existing boundaries intact posed a different problem. As people spilled out of cities and into their suburbs, the number of city deliveries might decline while the number of rural deliveries grew. Accordingly, the NALC occasionally seeks to extend its coverage to new territory, as it did in the Oakton/Vienna dispute.

Until relatively recently, city-to-rural conversions barely reached the Postal Service's radar screen. There was never an express ban on the practice but hardly anyone thought it generally appropriate. Farms could become cities but cities did not become farms. The idea that rural carriers could poach on existing city routes just did not arise, except in the rare case of a territorial trade-off to smooth boundary lines. [The Postal Service did issue a Regional Instruction in 1968 that prohibited extension of rural service to city patrons (NALC Ex. 31), but it never incorporated that instruction in the POM. That Instruction thus serves only as a statement of the Postal Service's policy at the time and does not control the present grievances.]

For the most part, the Postal Service tried to avoid conversions because they inevitably antagonized one or another of its unions. As David Charters, the former Director of the Postal Service's Office of Grievance Procedures, testified in the Oakton/Vienna case, the result was "sort of a bias" against conversions (NALC Ex. 43, p. 30). The safest course for the risk-averse Postal Service bureaucrat would be to maintain the status quo. But at this point a new consideration enters the picture. The Postal Service is supposed to operate efficiently. When the Postal Service was more of a political agency and faced little competition, it could sacrifice efficiency to other goals. As the Postal Service faced more competition and more concern in Congress over its budgetary problems, efficiency rose in the hierarchy of values. The Postal Reorganization Act (PRA) of 1970 reflected Congress's desire that the Postal Service act more like a business and less like a patronage provider.

Efficiency, however, often conflicts with stability. Where city and rural deliveries mingle, the status quo may not be the most efficient way to deliver the mail. Changing delivery patterns from city to rural or from rural to city, though, prompts the very jurisdictional disputes the Postal Service usually tries to avoid.

From the Postal Service's point of view, there is only one route out of this dilemma. If it had clear authority to assign deliveries in the most efficient fashion, it could satisfy Congress without the risk of second-guessing by arbitrators or judges. The first challenge, therefore, was to establish its power. Authority for rural-to-city conversions has long been available in the Postal

Operations Manual (POM), Section 611.321 of which specifies the criteria to be employed (USPS Ex. 9). That section's four criteria all deal with efficiency. So long as the Postal Service can demonstrate the existence of one or more of those criteria, rural-to-city conversions are proper, subject only to the NRLCA's right to grieve and arbitrate any given change.

2. City-to-Rural Conversions

a. The Sioux Falls Decision and the Charters Memorandum

The more difficult problem is converting territory from city to rural delivery. Because there were no regulations on point, the Postal Service initially justified its rare city-to-rural conversions on its statutory and contractual management rights. An early effort along those lines led to Arbitrator Sylvester Garrett's landmark Sioux Falls decision. As part of a broader reorganization of delivery services in the Sioux Falls area, the Postal Service transferred certain city routes to rural delivery in order to create positions for six displaced rural carriers. In the end, about 800 deliveries went from city to rural delivery and about 50 went from rural to city. The NALC apparently claimed that the Postal Service could never assign city deliveries to rural carriers. The Postal Service defended the grievance by arguing that the delivery crafts were indistinguishable and that in any event the Service had the authority to decide the type of delivery to be provided, and therefore the craft of the employees making the deliveries.

After a careful examination of the parties' bargaining history and of the National Agreement, Arbitrator Garrett rejected both extremes. He found that Management retained full authority to assign work except as limited by Article VII, Section 2-A, which in relevant respects reads the same today as it did in 1974. He sustained the grievance, however, because Section 2-A allowed "the type of reassignment of work here in issue" only "to maximize full-time employment opportunities and provide necessary flexibility" — and even then, only after a "studied effort" to accomplish those goals by combining work *within* crafts. Because the Postal Service met neither requirement, the conversion was improper.

Arbitrator Garrett wisely limited his ruling as closely as possible to the facts before him. His holding held Management to the words it had agreed to in the National agreement — that is, that the Postal Service would combine work of different crafts into a single job only for the stated purposes and only after the stated efforts to explore alternatives. The facts of that case differ widely from the facts here. Most notably, the changes in Sioux Falls involved the shift of entire bid positions in order to employ some displaced rural carriers. These grievances involve the transfer of a much smaller number of deliveries for very different reasons. As a result, Arbitrator Garrett's holding does not answer the issue posed by these parties.

Three parts of the Sioux Falls opinion do provide useful guidance. First, the National Agreement and other authorities include the principle of craft integrity. Even without a specific work-preservation guarantee, the Agreement's recognition clause and the parties' bargaining history show that the Postal Service is not free to ignore craft lines when assigning work. Article

VII, Section 2-A, on which Arbitrator Garrett so heavily relied, is just one example of that principle. Second, when navigating dangerous waters like these, every arbitrator should follow his advice to resolve jurisdictional disputes primarily by relying on "established practice in each Post Office in assigning work to one or the other of the craft bargaining units" (p. 17). To put it differently, work performed by rural carriers presumptively belongs to rural carriers, and work performed by city carriers presumptively belongs to city carriers. This is only a presumption, but Management must offer a sound reason and persuasive evidence if it is to overcome that presumption. Third, Article VII means what it says.

The Sioux Falls decision left open the question of what authority, if any, the Postal Service had for city-to-rural conversions in other circumstances and for other reasons. Because of the pressing nature of that question, the NALC President, Jim Rademacher, and the Director of the Postal Service's Office of Grievance Procedures, David Charters, met with Arbitrator Garrett. The only record of that meeting entered into evidence in this case is a memorandum from Charters to Regional Directors of Labor Relations dated June 9, 1975 (NALC Ex. 11) [referred to in this Opinion as the Charters memorandum]. According to that memorandum, a "basic premise" emerged from the meeting that "no significant amount of work that has traditionally been done by city letter carriers may be transferred to rural carriers (absent a material change in the nature of the work) except through the provisions of Article VII, Section 2.A." Perhaps more importantly, Charters wrote that "Service improvements, efficiency, or cost are, under the Agreement, not legitimate factors for consideration in making determinations of this nature." When city-to-rural conversions seem advisable for other reasons such as squaring off boundaries, Charters wrote, "such changes may be accomplished through exchanges of territory provided there is no significant net transfer of stops from city carriers to rural carriers, and also provided that both the NALC and NRLCA locals agree to the changes."

If the Charters memorandum binds the Postal Service today, it would obviously and easily resolve these and most of the other pending grievances. The parties therefore spent a good deal of effort debating the nature of his memorandum.

The Charters memorandum is not a provision of the NALC Agreement, nor is it a memorandum of agreement or a letter of intent. It is signed only by one party and it merely purports to record an interpretation. There is no evidence that Arbitrator Garrett or President Rademacher ever read it, let alone endorsed it. Furthermore, it is only an internal Postal Service document from an official in charge of grievances to labor relations regional directors. It thus is not as reliable or as binding as a formal agreement would be. The Postal Service and the NALC know how to write binding agreements when they want to. For reasons that do not appear in the record, they chose not to do so here. Finally, and more importantly for the present tripartite arbitration, the NRLCA was not a party to the meeting that resulted in the Charters memorandum or to the arbitrations that led up to it. Whatever the status of the memorandum in later disputes between the USPS and the NALC, it cannot control disputes between the USPS and the NRLCA or between the NALC and the NRLCA.

Nevertheless, the Charters Memorandum does reflect a reasonably authoritative contemporaneous reaction to the Sioux Falls award. It is therefore helpful but not controlling. To the extent it differs from or expands upon the Agreement or the relevant National level awards, it merely states the opinion of one high Postal Service official. It is worth noting that as late as 1980, the Postal Service issued a Step 4 decision that relied on the Charters memorandum as authoritative (NALC Ex. 30), and even at the arbitration hearing in this case the sole Management witness, Robert West, explained that the Postal Service still used the memorandum as a general guideline when making city-to-rural conversions. Despite those instances of reliance on the memorandum, the arbitration award that the Charters memorandum purports to interpret banned inter-craft work conversions only in certain limited circumstances, and those circumstances are not the ones at issue in these grievances. While the memorandum demonstrates that the Postal Service chose in 1975 to adopt a more restrictive stance on city-to-rural conversions, it remained free to change that stance.

b. The Oakton/Vienna Decision

The most recent and most persuasive arbitration decision that bears on the issue of city-to-rural conversions is the 1994 National level award of Arbitrators Mittenthal and Zumas in the Oakton/Vienna case. Like this case, Oakton/Vienna involved tripartite arbitration. Unlike this one and unlike Sioux Falls, the Oakton/Vienna case began as a work-acquisition claim by the NALC. Rather than merely protesting city-to-rural conversions, the NALC sought to take certain deliveries away from the NRLCA on the basis that demographic shifts had made formerly rural territory urban. Although Oakton/Vienna is a type of rural-to-city conversion case, the principles used to resolve it apply equally strongly to city-to-rural conversions.

The arbitrators relied heavily on Arbitrator Garrett's interpretation of Article VII in Sioux Falls and on his interpretation of Article I in his later 1975 West Coast decision (NALC Ex. 12). In his West Coast award, which involved neither the NALC nor the NRLCA, Arbitrator Garrett held that Article I protects the basic integrity of the separate craft units and "bars the transfer of existing regular work assignments from one national craft bargaining unit to another (absent any change in conditions affecting the nature of such regular work assignments), except in conformity with Article VII." Arbitrators Mittenthal and Zumas found that the West Coast award applies to the NALC and NRLCA because in 1975 the same National Agreement covered all four unions.

In light of those two awards, the arbitrators found that the prime factor in determining craft jurisdiction was past practice:

> From the standpoint of jurisdiction, the customary way of doing things becomes the contractually correct way of doing things. Work always performed by rural carriers in a given area is presumptively within NRLCA's jurisdiction just as work always performed by city carriers in a given area is presumptively within NALC's jurisdiction. This heavy reliance on "practice" was a means of insuring the stability of each craft bargaining unit. [P. 42]

Applying that principle to the NALC's work-acquisition claim, the arbitrators denied the grievance. The past practice of using rural carriers to serve the disputed territory governs at least until the "work is changed to such an extent that the 'established practice' can no longer be said to have persuasive force" (p. 52).

Because the Oakton/Vienna dispute differed in a critical respect from the present grievances — it represented a grab for new work rather than an effort to retain current work — it does not answer the questions posed in this case. The NRLCA's brief asserts flatly at p. 4 that

> When NALC lost *Oakton/Vienna*, it lost this case also. *Oakton/Vienna* controls this case, and the judgment and words of Messrs. Mittenthal and Zumas are dispositive.

The matter is not so simple. That case simply held that one union could not take over work long performed by members of a second union simply because the work is similar to that performed by the grieving union's members. The arbitrators did not address, and had no need to address, the question of whether and when Management could assign work from one union's jurisdiction to that of another. That remains an open question.

For immediate purposes, the most important aspects of the Oakton/Vienna award are its use of Arbitrator Garrett's decisions as providing crafts with a shield against most jurisdictional incursions and its endorsement of past practice as the surest guide to jurisdictional rights. Like their predecessor, Arbitrators Mittenthal and Zumas recognize that a party seeking to change a long-standing allocation of work can overcome the presumption in favor of the status quo only by producing a very strong justification. Whether that party is the NALC or the Postal Service matters not at all.

c. Other Relevant Authority

The remaining arbitral authority is of less relevance. One more decision by Arbitrator Garrett does shed some light on his West Coast decision, however. In an NALC grievance arising in the Miami area over a jurisdictional dispute with the APWU, Arbitrator Garrett in 1977 distinguished his West Coast award as involving the transfer of entire bid assignments from one craft to another (USPS Ex. 7). The Miami/Hollywood case, in contrast, involved "only a minor reassignment of work," and Article I incorporates not only the history of bargaining on a craft basis but also "a long history of day-to-day administration of the Postal Service." By making that distinction, he opened up some room for Postal Service innovation short of transfers of entire bid assignments. If Arbitrator Garrett's Sioux Falls and West Coast decisions provided crafts a shield against jurisdictional incursions, his Miami/Hollywood decision significantly trimmed that shield's size.

Some regional arbitration awards, notably J. Fred Holly's 1983 Venice, Florida decision (NALC Ex. 44) interpreted the POM provisions on rural-to-city conversions as applicable to city-

to-rural conversions. With due respect to those awards, they rest on the fundamentally flawed assumption that the Postal Service's failure to include city-to-rural conversions in the POM was simply an oversight. Absent some strong evidence of the "oversight," the better interpretive principle is that the POM covers only the listed situations. Perhaps the same principles should as a matter of logic or efficiency govern city-to-rural conversions, but that is not what the POM says. The Postal Service's later 1996 decision (USPS Ex. 5) to add express provisions on city-to-rural conversions demonstrates that the earlier section did not cover the situation. Because the new provisions far postdate the instant grievances and because they are the subject of a separate pending dispute, they do not govern this decision. I make no finding on their effect, if any, on grievances arising after their effective date.

C. The NRLCA's Procedural Objections

Apparently to the surprise of the NALC, the NRLCA's brief raised two procedural objections to these grievances. It argued that the parties' alleged "usages," "course of dealing," and "course of performance" amounted to a waiver of any right the NALC might have to assert its interpretation of the collective bargaining agreement, and it claimed that the grievances were barred by the doctrine of laches. The USPS's reply brief scrupulously avoided endorsing these NRLCA arguments.

Whatever merit the NRLCA's first argument might have is vitiated by the lack of evidence about the details of the parties' practices and by the rarity of city-to-rural conversions. The record contains no proof that the NALC ever (to quote the NRLCA's brief at 31)

> conducted itself in such manner and permitted the Postal Service a course of performance which warrant the reasonable construction of the contract language and the Charters Memorandum leaving the Postal Service free to assign or convert deliveries and routes to the rural delivery in the exercise of its Article 3 prerogatives.

Any waiver of contractual rights must be knowing, and there is not the slightest evidence that the NALC knowingly gave up any right to challenge city-to-rural conversions.

The second argument is even more technical. The legal doctrine of laches holds that an unreasonable delay in asserting one's rights can bar a belated claim if it severely prejudices another party. The NRLCA's brief (at 35, n.21) asserts that the length of time before the parties scheduled this case for arbitration while many other grievances were pending constitutes such an unreasonable delay. Apart from the parties' reservation of factual issues for later decision, the brevity of the record in this case makes it impossible to credit the NRLCA's argument. The record simply does not show the reasons for the delay in scheduling, so I cannot blame it on the NALC.

More importantly, the doctrine of laches concerns only a failure to assert one's rights in the first instance. The NALC apparently did assert its rights by promptly filing grievances over many city-to-rural conversions. That is certainly true of the only grievances before me. In litigation, rules of procedure specify how, and how quickly, a suit must progress once it is filed. In arbitration, the counterpart would be the time limits spelled out in a collective bargaining agreement's grievance article. One party's claim that another party violated those time limits would amount to a procedural arbitrability challenge. No party has suggested that the NALC violated the relevant provision of its collective bargaining agreement, Article 15, in processing these two grievances. There is thus no basis for holding that the NALC was guilty of an unreasonable delay.

D. Application

The best way to approach this case is by recognizing how narrow the issue presented really is. Two potentially large blocks of conversion cases are outside the scope of this case. First, it has been clear ever since Arbitrator Garrett's Sioux Falls, West Coast, and Miami/Hollywood decisions that the Postal Service has no authority to transfer whole bid positions from one craft to another for operational reasons except in conformity with Article 7, Section 2.A. Second, some cases of minor adjustments are too small to rise to the level of a contract breach. Moving a few deliveries from one craft to another for some legitimate operational reason, without a significant impact on the number of jobs or amount of income available to members of the losing craft, falls within Arbitrator Garrett's category (in his Miami/Hollywood decision) of "minor reassignments of work" justified by the Postal Service's "long history of day-to-day administration." Those routine minor adjustments are a logical part of Management's rights, protected by Article 3 of the Agreement.

These grievances present problems falling between those extremes because they involve the conversion of a sizeable number of deliveries without transferring entire bid assignments. Wherever the exact line between "a few" and "a sizeable number" of deliveries might fall, the 136 converted deliveries in Cary amounts to more than "a few." The number of converted deliveries in Placerville was even larger. The relevant number for the purpose of this classification is the *total* number of deliveries converted from one craft to another, not the *net* figure. If there is little or no net change, the possibility of a mutually satisfactory agreement increases, but the lack of net change does not eliminate either union's contractual right to its present work.

Within that middle ground, the primary controlling authorities are the parties' collective bargaining agreements. As interpreted by Arbitrators Garrett, Mittenthal, and Zumas, Article 1 (in both agreements) embodies the principle of craft integrity and Article 7 (in the NALC agreement) applies to conversions of work from one craft to another as well as to the combining of work from different crafts into a single position. Article 3 (in both agreements) protects Management's rights, "subject to the provisions of this Agreement"; in other words, it gives Management no power to overturn craft jurisdictions protected by the other articles. The

touchstone in all these cases is past practice. As the Oakton/Vienna award put it at p. 52, "the customary way of doing things is the most realistic guide to jurisdiction."

To summarize, in any jurisdictional dispute prompted by conversion of a sizeable number of deliveries from city to rural service, the union whose members have long performed the work presumptively retains the right to that work. However worthy in the abstract, operational justifications (such as a desire to square boundaries, eliminate commingling, and improve efficiency) do not by themselves overcome that presumption. The only exception to this rule is the one announced by Arbitrators Mittenthal and Zumas on the same page, "when work is changed to such an extent that the 'established practice' can no longer be said to have persuasive force."

The NALC challenges the Postal Service's city-to-rural conversion of 136 deliveries in Cary and 455 in Placerville that have been within its jurisdiction for many years. Because the Postal Service alleges neither that the work in question has changed enough to eliminate the "established practice" nor that it has satisfied the provisions of Article 7, it has failed to overcome the presumption in favor of NALC jurisdiction. The grievances must therefore be sustained.

Enforcing this long-standing principle does not unduly bind the Postal Service in these middle-ground situations, nor does it freeze in amber any current inefficient practices. The Postal Service has many ways to achieve the efficiencies expected by Congress. It can seek authority from Congress to make unilateral changes; it can negotiate changes in the National agreements; it can use its managerial powers to raise productivity within craft assignments; it can comply with the provisions of Article 7, Section 2.A. of the NALC agreement; and it can try to breathe life into the 1975 Memorandum of Understanding on jurisdictional disputes (NALC Exhibit 7). There may be other possibilities as well. The only thing that the Postal Service may *not* do, in light of its contractual commitments, is unilaterally shift a sizeable number of deliveries from city to rural service in violation of a still-viable established practice.

E. Remedy

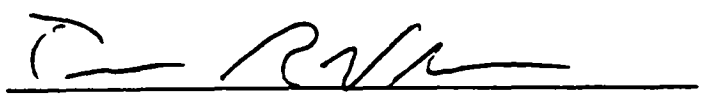
The parties limited their evidence to the narrowest possible issue. They did not even open the subject of the proper remedy. I shall therefore announce the remedial principle — that Management must restore the challenged deliveries to NALC jurisdiction and make whole any employees harmed by the conversions — and will remand the case to the parties. I shall retain jurisdiction to resolve any remedial disputes the parties are unable to answer.

AWARD

1. The grievances are sustained. The Postal Service violated the NALC agreement by unilaterally converting a sizeable number of deliveries in Cary, North Carolina and Placerville, California from city to rural service.

2. The Postal Service is directed to restore the challenged deliveries to NALC jurisdiction and to make whole any employees harmed by the conversions.

3. The parties are directed to negotiate over the implementation of this award. I shall retain jurisdiction to resolve any remedial disputes the parties are unable to answer.



Dennis R. Nolan, Arbitrator and Mediator

December 23, 1998
Date

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

November 7, 1988

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

Re: T. Keegan
Plant City, FL 33566
H4C-3W-C 15654

Dear Mr. Burrus:

On September 20, 1988, a prearbitration discussion was held between you and Bill Downes of this office on the above referenced case.

The issue in this case is whether the denial of Leave Without Pay (LWOP) for the purposes of working on a union newsletter violated the grievant's rights under Article 24.

During the discussion, mutual agreement was reached that any employee who has been selected as a full-time or part-time union representative may be granted leave without pay in accordance with Section 514.22 of the Employee and Labor Relations Manual to conduct union business. The grievance is remanded to the regional level to apply these provisions. If the parties are unable to resolve this case, it may be scheduled for regional arbitration.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand case number H4C-3W-C 15654 and remove it from the pending national arbitration listing.

Sincerely,

Stephen W. Furgeson
General Manager
Grievance and Arbitration Division

William Burrus
Executive Vice President
American Postal Workers Union, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

May 8, 1985

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Burrus:

This is in response to your March 12 letter regarding the application of leave regulations in circumstances where employees request leave in increments of 8 hours or less for randomly selected days throughout a prolonged absence.

The leave regulations in Chapter 5 of the Employee and Labor Relations Manual allow leave charges for full-time, part-time regular, and part-time flexible employees in minimums of one hundreth of an hour. We are not aware of any position being taken with regard to minimal use of annual leave or any other paid leave or which restricts the right of employees to request leave in minimal amounts for nonconsecutive days.

Sincerely,

W. E. Henry

William E. Henry, Jr.
Director
Office of Grievance and
Arbitration
Labor Relations Department

American Postal Workers Union, AFL-CIO

817 Fourteenth Street, N.W., Washington, D.C. 20005 • (202) 842-4246

WILLIAM BURRUS
Executive Vice President

March 12, 1985

Dear Mr. Henry:

On March 7, 1985 you and I discussed the appropriate application of leave regulations in those circumstances where employees request leave in increments of 8 hours or less for randomly selected days throught a prolonged absence. Circumstances have arisen, most recently in Roanoke, Virginia, where such requests have been rejected by the employer for reasons other than insufficient medical documentation or general recognition of an illness incapacitating the employee from performing assigned duties. The instant case in Roanoke represented a request for "pregnancy leave," however the union's interpretation of the applicable language is not limited to "pregnancy leave" requests but would apply to all leave requests that would otherwise be approved but for the question of consecutive hours or days.

Chapter 5 of the Employee and Labor Relations Manual sets forth the leave program as recognized by Article 10 of the National Agreement. These provisions establish conditions for authorization, setting forth specific circumstances justifying the use of leave.

Section 513 provides that the "Minimum Unit Charge" for such leave request shall be "hundreth of an hour (.01 hour)." These provisions place no restrictions on the right of an employee to request leave in advance over a randomly selected period and the obligation of the Employer is to determine if such requests are consistent with those circumstances justifying leave usage.

Please respond as to the Employer's interpretation and application of the above cited provisions as applied to leave requests for non-consecutive days.

Sincerely,

William Burrus,
Executive Vice President

Bill Henry, Director
Office of Grievance and Arbitration
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

WB:mc

American Postal Workers Union, AFL-CIO

817 Fourteenth Street, N.W., Washington, D.C. 20005 • (202) 842-4246

WILLIAM BURRUS
Executive Vice President

June 6, 1985

Dear Mr. Henry:

Please find enclosed a copy of district instructions (nearly illegible) that contradict the resolution we discussed on the rights of employees to use leave in sporadic intervals if the leave would otherwise be approved.

Please review and contact my office for discussion.

Sincerely,

William Burrus,
Executive Vice President

Bill Henry
Office of Grievance and Arbitration
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

WB:mc

Enc.

PAID LEAVE

It has been brought to my attention that some employees on long term absences have been Inappropriately using paid leave only before and/or after a holiday in order to receive holiday pay.

You are to review this abuse with finance immediately and bring the practice to a halt

The scheme works this way. An employee off work from February 1, 1985 til August 1st due to an illness. The employee has only 100 hours of sick leave and 20 hours annual leave. Recognizing that paid leave will run out quickly the employee decides to request leave only before and after the holiday occuring on February 16, May 27 and July 4th.

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260-0001

July 17, 1985

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Burrus:

This is in reference to your June 6 letter along with which you forwarded a copy of instructions issued in a Postal Service District pertaining to paid leave. You indicated that you believed the instructions to be inconsistent with the position taken in earlier correspondence and discussions between us relative to the use of leave in minimal amounts for nonconsecutive days.

We have looked into this matter. Please be advised that the instructions which prompted your letter have been rescinded. I trust that this action satisfactorily resolves the issue.

Sincerely,

W. E. Henry, Jr.

William E. Henry, Jr.
Director
Office of Grievance
and Arbitration
Labor Relations Department

h. Military duty for scheduled drills or for periods of training.	An employee enlisted under the Reserve Forces Act of 1955, who has completed the initial period of active duty training of not less than 3 months or more than 6 months may be granted LWOP *for scheduled drills or periods of training* (see 365.23).
i. Military duty for any purpose, *training or otherwise.*	Eligible members of the National Guard or reserve components of the Armed Forces *ordered to active duty for training or for any other purposes, for a specified period of time not to exceed one year, but in excess of the total time allowable under military leave and annual leave shall be granted LWOP.*
j. Postmaster elected to position of president of either the National Association of Postmasters of the U.S. or the National League of Postmasters.	(1) LWOP normally does not exceed 2 consecutive years coinciding with the elected term of office. (2) The postmaster requests in writing, through the appropriate management structure, that the Senior Assistant Postmaster General for Employee and Labor Relations (SAPMG, E&LR) grant postmasters LWOP during tenure of presidency for the purpose of serving as *resident* president of the employee organization in Washington, DC in a full-time capacity. (3) If LWOP is granted, the postmaster continues to be eligible for appropriate fringe benefits during that period. (4) The SAPMG, E&LR, reserves the right to deny the request for LWOP if it is determined that the position must be filled on a permanent basis, unencumbered by an individual on prolonged leave. (5) If the employee declines to request LWOP under the foregoing condition in order to serve as a full-time resident president, 519.272 applies.
k. Union business.	See applicable provisions of current Collective Bargaining Agreement.

514.5 Forms Required

.51 Form 3971. A request for LWOP is submitted by the employee on Form 3971, *Request for, or Notification of, Absence.* If the request for leave indicates the LWOP will extend over 30 days, a written justification and statement of reason for the desired absence is required.

.52 Form 50. Form 50, *Notification of Personnel Action,* is prepared when LWOP is in excess of 30 days.

515 Absence For Maternity/Paternity Reasons

515.1 Absence for Maternity Reasons

.11 Policy

.111 Temporary Incapacitation for Duty. Pregnancy is a condition which eventually requires the employee to be absent from the job because of incapacitation. For leave purposes, a period of absence covering pregnancy and confinement is to be treated like any other condition which incapacitates the employee from the performance of duty. As a means of accommodating this temporary incapacitation, appropriate leave is available to the employee.

.112 General Leave Policy Applies. Maternity absence is not a separate type of leave. The same leave policies, regulations, and procedures apply to absence for maternity reasons as apply to requests for leave generally.

.12 Granting Leave. Maternity absences may be a combination of sick leave, annual leave, and LWOP:

a. Sick Leave. To the extent available, sick leave may be used to cover the time required for physical examinations and periods of incapacitation.

b. Annual Leave or LWOP. Absence due to reasons such as the need for a period of adjustment following birth and recuperation, or for time to make arrangements for the care of the child, may be covered only by the use of available annual leave or LWOP if requested by the employee and approved by the appropriate management official. An employee need not exhaust sick and annual leave prior to requesting LWOP (see 514.4).

.13 Request for Leave. An employee informs her supervisors as soon as possible of her intention to request leave for maternity reasons and indicates the type of leave desired, approximate dates, and anticipated duration to allow the supervisor to prepare for any staffing adjustments which may be necessary. The length of absence from duty for maternity reasons is jointly determined by the employee, her physician, and management.

.14 Request For Light-Duty/Temporary Reassignment. Installation heads make every reasonable effort to accommodate requests for light duty or temporary reassignment to other available work for which the employee is qualified and which is requested due to maternity reasons. Such requests are accompanied by appropriate medical recommendations.

515.2 Absence For Paternity Reasons. A male employee may request only annual leave or LWOP for purposes of assisting or caring for his minor children or the

UNITED STATES POSTAL SERVICE
Washington, DC 20260

REF: RAL:FW

DATE: 5/19/78

SUBJECT: Military Leave for Probationary Employees

TO:

Fred Shelton
Office of Compensation

This responds to your recent telephone inquiry concerning military leave for employees during their probationary period.

The fact that an employee is in his probationary period has no effect on his right to military leave. Rather, an employee who would be entitled to military leave after completion of the probationary period is also entitled to that military leave during the probationary period. See old Postal Manual Part 721.731.

The effect of an absence for military purposes on an employee's completion of the probationary period is a more complicated question. The probationary period is tolled during military service, including military leave. The applicable procedure is provided in the U. S. Department of Labor's Legal Guide and Case Digest: Veterans Reemployment Rights Under the Universal Military Training and Service Act, As Amended, and Related Acts, §3.24 at 325:

> ... a probationary position is protected by the reemployment statutes.
>
> This does not mean, however, that military service can be counted toward completion of the probationary period. Where the probation involves a genuine evaluation of the employee's aptitude, skill, conduct and performance, the employee is entitled to return only to the probationary status he left; and after being reemployed, he must complete the remainder of his probationary period satisfactorily in accordance with the same standards (no higher, and no lower) as are applied to other probationers.

> Upon satisfactory completion of the probation, his seniority must be established as if he had remained continuously employed instead of entering military service.

Thus, for example, an employee who left work on military leave after completing 60 days of a 90-day probationary period would, upon returning from military leave, still face a 30-day probationary period. However, upon successful completion of the remaining 30 days of his probationary period, the employee would be credited with seniority for all purposes as if the military leave was time worked.

Richard A. Levin
Attorney
Office of Labor Law

cc: Arthur Eubanks

Discrepancies and Exceptions to Postal Service Letter dated 6 Feb 87

The following is a preliminary paragraph by paragraph analysis of the Postal Service letter written by John C. Goodman, Field Division General Manager/Postmaster of the St. Louis Division, showing the discrepancies as appropriate. The letter uses references to the Employee and Labor Relations Manual (E&LR) in an obvious attempt to make the paragraphs of the letter appear official and lend them a degree of credibility. It is important to note that several other sections of the E&LR manual have been conspicuously ommitted. Additionally, important information from the very sections being referenced has been left out, questionable paraphrasing has occured, and there has been inclusion of outright erroneous material. All this has been done apparently to substantiate the discouraging and negative attitude of the letter, and circumvent the true intent of the E&LR manual as well as Title 38 itself. A copy of the COMPLETE section (Section 517) of the E&LR manual is provided as an enclosure to assist investigation in this regard.

PARA #1 - Appears to be completely in order.

PARA #2 - The example cited in this paragraph is in direct conflict with Title 38 of the U.S. Code, as well as with further instructions as issued in the Department of Labor publication, Job Rights of Reservists and Members of the National Guard which explicitly states "The employee must return to work at the start of the next regularly scheduled shift after the expiration of the last calender day necessary to travel home from training or after he or she has had reasonable time to rest" (copy enclosed)

PARA #3 - Appears to be completely in order.

PARA #4 - A request for documentation as to the specific duty performed is clearly not required by the E&LR manual or Title 38. Additionally, this is an unreasonable administrative burden on the military in light of the fact that official documentation for periods of training is already provided. Furthermore, to require this additional documentation would in certain cases necessitate a security violation if the individual's duties were of a classified nature.

PARA #5 - Totally false and in direct conflict with Title 38. While there exists a 15 day limit on military leave with pay, there is NO LIMIT on military leave itself. This is further elaborated on in the E.S. Gram dated May 1984 from the National Committee for Employer Support of the Guard and Reserve. (copy enclosed) E L+R

PARA #6 - Contains the veiled threat of possible AWOL charges (a very serious offense and a term of degradation to most military personnel) based upon the erroneous and misleading information provided in PARA #5. It is interesting to note that neither the term AWOL nor the conditions for its implementation are mentioned anywhere in Section 517 of the E&LR manual.

PARA #7 - Although this paragraph aligns itself closely to the actual verbage of Section 517.721, it is the most offensive of all and the one that

evoked the most outrage among members of the Guard. The absense of any supportive statements and the mood established by the previous paragraphs makes the true meaning clearly evident. When reading between the lines and in light of the content and tone of the rest of the letter it is apparent to all but those using the most primitive analysis that what is said is not to bid on a job that doesn't conflict with military duties but to bid on a job that doesn't conflict with postal duties - and if so I feel that is a grieveous moral and legal error.

Paragraph Two: The example is not complete, but was intended to protect employees against charges of annual leave or leave without pay when the absence is beyond the legal limit of 15 calendar days, or when the day(s) of absence was not included in the Military Orders. (The reference may be found in E&LR Manual 517.122G & 517.631).

Paragraph Four: The first sentence of this paragraph states correct policy and what is expected as documentation in the Saint Louis Field Division. The second sentence is inaccurate and inappropriate. The information on duty that was performed was never demanded or expected.

Paragraph Five: Mr. Pitcher is correct in that there is no limit on military leave, only on paid military leave. The wording of the first sentence is poor, but the reference, E&LR 517.51, also limits granting military leave to 15 days without any reference to nonpay military leave.

Paragraph Six: There is no intended threat in this paragraph. It is added emphasis that an employee may experience use of annual leave or loss of pay if he/she has no annual leave or elects not to use it. Use of the term absent without official leave (AWOL) was unnecessary, however, there could be instances where an AWOL charge would be appropriate.

Paragraph Seven: The intent of this paragraph was to highlight a final alternative that employees may use to obtain maximum military leave without loss of pay.

The Saint Louis Field Division and Postmaster John Goodman do not have a negative attitude toward Military Leave. All postal officials are aware of the vital role played by the National Guard in our country's defense, and participation by employees is encouraged. Although the memo in question has been in use for over a year without any compiaint, it obviously contains some errors as pointed out by Mr. Pitcher. The term "military leave" has become synonymous with "paid military leave," and explanation of this this would have clarified the issue considerably.

The commanding tone of the memo was meant to reinforce the importance of understanding procedure in avoiding error. However, it seems clear from the perceptions of Mr. Pitcher, and those he talked to, that this tone had an undesirable side effect. We regret that we were not sufficiently sensitive to the implications of the tone of this memorandum.

Your constituent may be assured that improvement will be made in the handling of information on military leave in the Saint Louis Field Division.

If I may be of further assistance, please let me know.

Sincerely,

James V. Hitaffer

James V. Hitaffer
Representative
Office of Government Liaison

UNITED STATES POSTAL SERVICE

SAINT LOUIS, MO. 63155 - 9998

56C

OUR REF CED12:MDooley:314-436-3532:-9513:92-A06

DATE February 6, 1987

SUBJECT Military Leave

TO

Employees Requesting Military Leave

Per the policy/procedures outlined in the E&LR Manual, you have these responsibilities when requesting military leave:

1. You must be in a 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. (E&LR 517.61)

2. You must make a request for leave for military duty on a Form 3971 and obtain your supervisor's approval before taking the leave. Leave for military duty will be granted only for the actual dates of the duty. On your next scheduled tour of duty, you are required to report to work. For example, an employee attends military duty on a Sunday but is scheduled to report to work on Sunday night at 2300 (11:00 PM). Since this is his Monday tour, he is expected to report to work at 2300 Sunday night. (E&LR 511.23)

3. You must submit a copy of official duty orders or official notices signed by the appropriate military authority for weekly, biweekly, monthly training meetings with the Form 3971 requesting leave for military duty. This will notify the Postal Service that you are scheduled for training. (E&LR 517.71)

4. You must submit a copy of military orders properly endorsed by appropriate military authority to show that the duty was actually performed upon return from military duty. This documentation must specifically state the duty that you performed. Failure to submit this documentation upon your return to work could cause your absence to be charged to AWOL. (E&LR 517.22)

5. You must not use more than fifteen (15) days of military leave per fiscal year if you are a full-time employee or more than eighty (80) hours per fiscal year if you are a part-time employee. A part-time employee's military leave allowance is further restricted in that he: See Section 517.6 subsection .633

a. Earns one (1) hour of military leave for each 26 hours that he was in a pay status in the previous fiscal year, and

b. He must have been in a pay status a **minimum** of 1,040 hours during the previous fiscal year. (E&LR 517.51)

6. You will be charged annual leave or leave without pay (LWOP) for absences in excess of your military leave allotment in a fiscal year. If military leave above your legal limit is erroneously granted and paid, it will be recovered and the absence charged to annual leave, leave without pay, or AWOL based upon the individual circumstances. (E&LR 517.6)

7. You should attempt to bid on a work assignment (when the opportunity presents itself) which will not conflict with your military duties. (E&LR 518.721)

If you have any questions concerning these responsibilities, contact your supervisor or timekeeper.

JOHN C. GOODMAN
Field Division General Manager/Postmaster
St. Louis Division
St. Louis, MO 63155-9998

Memorandum of Agreement

Between the

United States Postal Service

and the

American Postal Workers Union, AFL-CIO

Re: Clarification of Regulations for National Day of Observance

The parties agree that the following procedures will apply to affected employees if the Postmaster General or designee determines that the Postal Service will participate in a National Day of Observation (e.g., National Day of Mourning), subsequent to the declaration of a National Day of Observance having been made by Executive Order of the President of the United States.

1. Full-time employees whose basic work week includes the National Day of Observance as a scheduled work day but who are not directed to report for work, will be granted administrative leave for that day.

2. Full-time employees whose basic work week includes the National Day of Observance as a scheduled work day, and who perform service, will be granted a day of administrative leave at a future date, not to exceed eight hours.

3. Full-time employees whose basic work week includes the National Day of Observance as a non-scheduled day and are not directed to report for work, will be granted a day of administrative leave at a future date.

4. If the National Day of Observance is a full-time employee's non-scheduled day and the employee is scheduled to work, the employee will receive overtime pay, plus up to eight hours of future administrative leave for the number of hours worked.

5. The same provisions apply to part-time regular employees as apply to full-time employees. The total hours of administrative leave should only equal the scheduled hours for the National Day of Observance, which may be less than eight hours. However, part-time regular employees whose basic work week includes the National Day of Observance as a non-scheduled work day and who are not directed to report for work on the National Day of Observance will be granted a day of administrative leave at a future date equal to the average number of daily paid hours in their schedule for the service week previous to the service week in which the National Day of Observance occurs, which may be less than eight hours.

6. Part-time flexible employees should be scheduled based on operational needs. Part-time flexible employees who work will be granted a day of administrative leave at a later date. The day of administrative leave will be

based on the number of hours actually worked on the National Day of Observance, not to exceed eight hours. Part-time flexible employees who are not directed to work on the National Day of Observance will be granted administrative leave at a future date equal to the average number of daily paid hours during the service week previous to the service week in which the National Day of Observance occurs, not to exceed eight hours.

7. In the APWU crafts and the NALC, transitional employees will only receive pay for actual work hours performed on the National Day of Observance. They will not receive administrative leave.

8. If an employee is on leave or Continuation of Pay on the National Day of Observance, the employee will be granted a day of administrative leave at a future date, not to exceed eight hours.

9. An employee on OWCP, AWOL, suspension or pending removal on the National Day of Observance will not be granted administrative leave. If the employee on AWOL, suspension or pending removal is returned to duty and made whole for the period of AWOL, suspension or removal, the employee may be eligible for administrative leave for the National Day of Observance if the period of suspension or removal for which the employee is considered to have been made whole includes the National Day of Observance. Such determination will be made by counting back

consecutive days from the last day of the suspension or removal to determine if the employee had been made whole for the National Day of Observance.

10. Where provisions in this Memorandum of Agreement provide for a day of administrative leave to be taken at a future date, such leave must be granted and used within six months of the National Day of Observance or by the end of the Fiscal Year, whichever is later. However, administrative leave will not be granted to employees who are on extended leave for the entire period between the Day of Observance and six months from that date, or between the Day of Observance and the end of the Fiscal Year, whichever is later.

11. Administrative leave taken at a future date must be taken at one time.

12. Administrative leave to be taken at a future date may, at the employee's option, be substituted for previously scheduled but not used annual leave.

13. Administrative leave to be taken at a future date should be applied for by using the same procedures which govern the request and approval of annual leave consistent with Local Memoranda of Understanding.

Anthony J. Vegliante Vice President Labor Relations United States Postal Service	Moe Biller President American Postal Workers Union, AFL-CIO

Date: _____

I am enclosing a copy of the implementing settlement on the arbitration decision of the Nixon Day of Mourning. Also enclosed is a listing of employees in your office who were on the rolls but did not use administrative leave during the period following April 27, 1994 (Nixon Day of Mourning). This listing confirms that the employees were on the postal rolls on April 27, 1994 and are on the rolls on the date of settlement, ~~June 19~~ MAY 22, 1998. It will be necessary that the local parties confirm that:

* The listed employees qualify for the remaining eligibility criteria
* Whether or nor additonal employees qualify
* Whether or not the listed employees were granted administrative leave but failed to use it

You are to meet with local management to:

1. Review the listing of eligible employees

2. Determine the number of hours of administrative leave to be afforded to eligible part time employees. (If part time in 1994 and full time in 1998 employee is to receive 8 hours of Administrative Leave). If full time in 1994 and part time in 1998, employee to receive the average hours worked during week of May 23-29, 1998

3. Reach agreement on the procedures for requesting and using administrative leave consistent with the provisions of this agreement and the Local Memorandum of Understanding insuring that every eligible employee has an opportunity to use leave prior to deadline.

4. Reach agreement on a procedure for reviewing appeals for eligibility by employees who are not identified by the local parties.

A summary of the agreement is as follows:

ELIGIBLE EMPLOYEES

A. On the postal rolls on April 27, 1994 and on the postal rolls in APWU Craft on ~~June 19~~ MAY 22, 1998 (the intervening time does not have to be continuous or within the same craft or bargaining unit)

B. Did not receive Administrate Leave because of leave or schedule off day on April 27, 1994 and was not credited with Administrative Leave but failed to use it

C. Not pending removal (off the postal payroll) on ~~June 19~~ MAY 22, 1998

D. If AWOL - On Suspension - Pending Removal on April 27, 1994 - was returned to duty and made whole for the period of the AWOL, Suspension or Removal. (If made whole for a partial period of a suspension or removal the partial make whole period will be applied to begin with the last date of the suspension or removal and applied for consecutive days to determine if employee was in a pay status on April 27, 1994).

INELIGIBLE EMPLOYEES

A. Not on the postal rolls on April 27, 1994 or postal rolls APWU craft ~~June 19~~ MAY 22, 1998

B. Not in the APWU bargaining unit on ~~June 19~~ MAY 22, 1998 (Promoted to supervisor-EAS position or transfer to non-APWU craft)

C. Previously received Administrative Leave for April 27, 1994 whether used of failed to use prior to deadline

D. In AWOL status, Suspended or pending Removal on April 27, 1994 and AWOL, Suspension or Removal not reversed

E. Pending Removal on June 19, 1998 (after exhaustion of 30 day advance

notice). If returned to work, with or without back pay, employee will be eligible if they were on the rolls on April 27, 1994 and must use leave within 60 days of return.

F. Transitional Employees

The national parties have made every effort to reach mutual agreement on the implementation of this issue and that agreement includes all anticipated issues. The local parties are responsible for resolving all disputes arising out of this agreement. Disagreements are not anticipated but any unresolved issues will be referred to Article 15 contractual grievance procedure.

William Burrus

IMPLEMENTATION AGREEMENT
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION

The parties agree that the following will apply in the implementation of Arbitrator Das's award in case Q90C-6Q-C 94042619 concerning the Nixon Day of Mourning.

Eligible employees who were on the rolls on April 27, 1994, and who are on the rolls on May 22, 1998, in the APWU bargaining unit, will be granted administrative leave as described below.

This administrative leave is to be taken all at one time, and must be used no later than Friday, December 4, 1998 (PP 25, 1998), except as noted below. The administrative leave may, at the employee's option, be substituted for annual leave which was previously scheduled but has not yet been used. In the alternative, the employee may request administrative leave under the same procedures which govern the request and approval of annual leave.

Eligible employees:

This settlement is intended to grant administrative leave to employees who did not work on April 27, 1994 (either because they were not scheduled to work on that day or because they had leave for that day), and who did not receive administrative leave on that day. Leave entitlement will be as follows:

- Full-time employees covered by this settlement will be granted 8 hours of administrative leave.

- Part-time flexible employees covered by this settlement will be granted administrative leave equal to the average number of daily paid hours during the week of May 16-22, 1998, not to exceed 8 hours.

- Part-time regular employees covered by this settlement will be granted administrative leave equal to the number of daily hours in their regular schedule as of May 22, 1998, or if their regular schedule contains a different number of hours on different days, they will be granted administrative leave equal to the average number of daily hours in their schedule for the week of May 22, 1998, not to exceed 8 hours.

Ineligible employees:

This settlement does not apply to employees who have already received administrative leave or who had the opportunity to use administrative leave in connection with the Nixon Day of Mourning, and such employees are not entitled to any additional administrative leave as a result of this settlement. This includes the following employees:

- employees who did not work on April 27, 1994, and who received administrative leave for that day.

- employees who worked on April 27, 1994, and who subsequently had the opportunity to use administrative leave, as a result of the Joseph J. Mahon, Jr., letter dated April 26, 1994 (copy attached).

This settlement does not cover Transitional Employees (TEs), as TEs are not entitled to administrative leave in connection with the Nixon Day of Mourning.

Employees who were absent on April 27, 1994 due to absence without leave (AWOL) or for disciplinary reasons (suspension or pending removal) will not be entitled to administrative leave under this settlement unless they were returned to duty and made whole for the time period including April 27, 1994, and provided they are otherwise eligible by the terms of this settlement.

Employees who, as of the date of this settlement, are absent pending removal, will not be entitled to this administrative leave unless they are returned to duty and are otherwise eligible by the terms of this settlement. In such cases, the administrative leave must be used within 60 days of their return, if they return to duty after October 3, 1998.

The parties at the local level will share responsibility for identifying and resolving any disputes as to specifically which employees are entitled to administrative leave under this settlement. The parties will meet and identify the eligible employees no later than July 24, 1998. Following the identification of eligible employees, letters will be issued to those employees informing them that they are eligible.

The union at the national level will provide a list of other eligible employees who were on the rolls April 27, 1994 and on the rolls on the date of this settlement, and who were not granted administrative leave in 1994.

The parties agree that this settlement will not be cited or used as precedent in any future discussions or in any other forum whatsoever, other than to enforce the terms of the settlement itself.

John E. Potter
Senior Vice President
Labor Relations

6/19/98
Date

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

6/19/98
Date

Attachment

JOSEPH J. MAHON JR.
VICE PRESIDENT, LABOR RELATIONS

UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

April 26, 1994

ALL POSTAL INSTALLATIONS

SUBJECT: National Day of Mourning - Administrative Directions

Reference is made to the April 26, 1994, Memorandum for all Postal Installations concerning the National Day of Mourning - Administrative Directions, which memorandum was issued by Messrs. Porras and Mahon.

Representatives of the Postal Service and the APWU met to discuss the April 26, 1994 memorandum and have reached agreement or clarified several issues, which appear in the attached April 26, 1994 memorandum from Moe Biller to his various resident officers, regional coordinators and national business agents. The parties agreed that future administrative leave taken, which must be granted and used by September 16, 1994, is to be taken at one time. Moreover, such administrative leave may, at the employee's option, be substituted for previously scheduled annual leave. In the alternative, the employee may apply for administrative leave by using the same procedures which govern annual leave.

Additionally, where April 27 is the full-time employee's non-scheduled day and the employee is scheduled to work on April 27, the employee will receive overtime pay, plus future administrative leave for the number of hours worked, up to 8 hours. Further, employees on suspension or OWCP will not receive administrative leave.

The parties did not agree that those employees who are non-scheduled or on leave for any reason should receive administrative leave. The Postal Service position remains that employees who are non-scheduled or on leave for any reason will not receive administrative leave or any extra compensation. Also, there is a dispute as to whether transitional employees (TEs) should receive administrative leave. The Postal Service position remains that TEs will not receive administrative leave and only will receive pay for actual work hours performed on April 27, 1994.

Accordingly, the April 26, 1994 memorandum which was issued by Messrs. Porras and Mahon, as clarified by this memorandum shall serve as the necessary administrative directions for the National Day of Mourning.

for Anthony J. Vegliante
Joseph J. Mahon, Jr.

Attachment

202-268-3619
FAX 202-268-3074

UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260

Mr. Thomas A. Neill
Industrial Relations Director
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: H7C-NA-C 83
W. Burrus
Washington, DC

Dear Mr. Neill:

Recently, Bobby Kennedy and Randy Sutton met in a prearbitration discussion of the above-referenced case.

The issue in this grievance concerns the utilization of paid leave requested in conjunction with holidays, when the request originates from an employee in an extended leave without pay (LWOP) status.

The parties mutually agree it is inappropriate for employees in an extended LWOP status to manipulate the utilization of paid leave for the purpose of obtaining paid holidays. The parties further agree management should not deny paid leave requests from employees in an extended LWOP status solely because it provides an entitlement to a paid holiday.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case and remove it from the pending national arbitration listing.

Sincerely,

David P. Stanton
for Anthony J. Vegliante
Manager
Grievance and Arbitration
Labor Relations

Thomas A. Neill
Industrial Relations Director
American Postal Workers
Union, AFL-CIO

Date: 10-29-93

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES POSTAL SERVICE
AND
THE AMERICAN POSTAL WORKERS UNION, AFL-CIO
AND
THE NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

The United States Postal Service, the American Postal Workers Union, AFL-CIO, and the National Association of Letter Carriers, AFL-CIO, hereby agree to resolve the following issues which remain in dispute and arise from the application of the overtime and holiday provisions of Articles 8 and 11 of the 1984 and 1987 National Agreements. The parties agree further to remand those grievances which were timely filed and which involve the issues set forth herein for resolution in accordance with the terms of this Memorandum of Understanding.

12 Hours In A Work Day and 60 Hours In A Service Week Restrictions

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. Furthermore, the employee's tour of duty shall be terminated once he or she reaches the 60th hour of work, in accordance with Arbitrator Mittenthal's National Level Arbitration Award on this issue, dated September 11, 1987, in case numbers H4N-NA-C 21 (3rd issue) and H4C-NA-C 27.

Holiday Work

The parties agree that the Employer may not refuse to comply with the holiday scheduling "pecking order" provisions of Article 11, Section 6 or the provisions of a Local Memorandum of Understanding in order to avoid payment of penalty overtime.

The parties further agree to remedy past and future violations of the above understanding as follows:

1. Full-time employees and part-time regular employees who file a timely grievance because they were improperly assigned to work their holiday or designated holiday will be compensated at an additional premium of 50 percent of the base hourly straight time rate.

2. For each full-time employee or part-time regular employee improperly assigned to work a holiday or designated holiday, the Employer will compensate the employee who should have worked but was not permitted to do so, pursuant to the provisions of Article 11, Section 6, or pursuant to a Local Memorandum of Understanding, at the rate of pay the employee would have earned had he or she worked on that holiday.

The above settles the holiday remedy question which was remanded to the parties by Arbitrator Mittenthal in his January 19, 1987 decision in H4N-NA-C 21 and H4N-NA-C 24.

William J. Downes
Director, Office of
Contract Administration
Labor Relations Department

DATE 10/19/88

Thomas A. Neill
Industrial Relations Director
American Postal Workers
Union, AFL-CIO

DATE 10/19/88

Lawrence G. Hutchins
Vice President
National Association of
Letter Carriers, AFL-CIO

DATE 10/19/88

Biller Dispute

47

Re: Court Leave

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

May 24, 1984

Mr. Moe Biller
President
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Mr. Vincent R. Sombrotto
President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001-2197

Gentlemen:

As you may be aware, the Postal Service's court leave regulations have been called into question in certain discrimination suits brought against the Postal Service. Most recently, in Stup v. Bolger, Civil Action No. 83-0205-A (February 7, 1984), a district court held that our denial of compensation to an employee testifying on behalf of a Title VII plaintiff was inequitable. While we believe that our court leave regulations are legally sound, and that the decision in the Stup case does not require any change in those regulations, we recognize an element of unfairness in not providing compensation for plaintiffs' witnesses in such cases. Accordingly, the Postal Service proposes to expand the definition of court leave contained in section 516.31 of the Employee and Labor Relations Manual, as follows (substantive changes underscored):

> 516.31 Definition. Court leave is the authorized absence from work status (without loss of, or reduction in, pay, leave to which otherwise entitled, credit for time or service, or performance rating) of an employee who is summoned in connection with a judicial proceeding, by a court or authority responsible for the conduct

of that proceeding, to serve as a juror or to serve as a witness in a nonofficial capacity on behalf of a state or local government or in a nonofficial capacity on behalf of a private party in a judicial proceeding to which the Postal Service is a party or the real party in interest. The court or judicial proceeding may be located in the District of Columbia, a state, territory, or possession of the United States, including the Commonwealth of Puerto Rico, the Canal Zone, or the Trust Territory of the Pacific Islands. Judicial proceedings contemplate any action, suit, or other proceedings of a judicial nature, but do not include administrative proceedings such as hearings conducted pursuant to 650, Adverse Personel Action-Grievance and Appeal (Nonbargaining).

Consistent with this revision, the Postal Service also proposes to change the following related sections of the court leave regulations:

516.1 Absences for Court or Court Related Service

Nature of Service	Court Leave	Official Duty	Annual Leave or LWOP
II. Witness Service			
(C) on behalf of private party			
(2) not in official capacity			
(a) USPS a party	X		
(b) USPS not a party			X

516.331 Pay Status Requirement. Court leave is granted only to eligible employees who, except for jury duty, service as a witness in a nonofficial capacity on behalf of a state or local government, or service as a witness in a nonofficial capacity on behalf of a private party in a judicial proceeding to which the Postal Service is a party or the real party in interest, would be in work status or on annual leave. An employee on LWOP when called for such court service, although otherwise eligible for court leave, is not granted court leave, but may retain any fees or compensation received incident to court service.

516.332 Employee on Annual Leave. If an eligible employee while on annual leave is summoned for jury duty, service as a witness in a nonofficial capacity on behalf of a state or local government, or service as a witness in a nonofficial capacity on behalf of a private party in a judicial proceeding to which the Postal Service is party or the real party in interest, while on annual leave, the employee's annual leave is cancelled and the employee is placed on court leave for the duration of such court service. Employees who are not entitled to court leave must use annual leave or LWOP for the period of absence from duty for such court service.

516.43 Witness Services in a Nonofficial Capacity on Behalf of a Private Party. An employee who testifies in a nonofficial capacity (as a private individual) on behalf of a private party is not performing official duty. The employee's absence is charged to court leave if the testimony is given in a judicial proceeding to which the Postal Service is a party or the real party in interest (see 516.31). If the Postal Service is not a party or the real party in interest, the employee's absence is charged to annual leave or LWOP and the employee may retain any fees or compensation received for such witness service.

As you can see, under these proposed revisions, the Postal Service would continue to provide court leave to employees serving as jurors or testifying on behalf of a state or local government, and, in addition, would provide court leave to employees testifying on behalf of private parties in judicial proceedings brought by or against the Postal Service. Thus, for example, court leave would be provided to employees testifying on behalf of plaintiffs in Title VII discrimination suits brought against the Postal Service.

If you have no objection to the above revisions, please notify Ned Braatz of my staff at 245-5158. We will then take the necessary action to implement these changes.

Sincerely,

James C. Gildea

James C. Gildea
Assistant Postmaster General
Labor Relations Department

American Postal Workers Union, AFL-CIO
817 Fourteenth Street, N.W., Washington, D.C. 20005 • (202) 842-4246

WILLIAM BURRUS
Executive Vice President

March 12, 1984

James C. Gildea
Assistant Postmaster General
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W
Washington, D.C. 20260

Dear Mr. Gildea:

The United States District Court for the Eastern District of Virginia in the case of Douglas H.Stup v. William F. Bolger, Civil Action No. 83-0205-A decided that the plaintiff was entitled to court leave even though he was not testifying in an official capacity. This decision differs from USPS interpretation of leave provisions governing court leave. Is it the intent of the Postal Service to modify existing interpretation and practice to conform to this decision?

Sincerely,

William Burrus,
Executive Vice President

WB:mc
court leave

IN THE DISTRICT COURT OF THE THIRTEENTH JUDICIAL DISTRICT OF THE STATE OF MONTANA IN AND FOR THE COUNTY OF CARBON

STATE OF MONTANA,
Plaintiff,
vs.
KENT ALLEN SANDERSON,
Defendant.

No. DC 82-02

SUBPOENA

THE STATE OF MONTANA TO _____

YOU ARE COMMANDED to appear and attend before our District Court of the Thirteenth Judicial District of the State of Montana, in and for the County of Carbon, at a term of said Court to be held at the Courthouse, at Billings, in the County of Yellowstone, on the 12th day of April, 1983, at 9:00 o'clock a.m., then and there to testify as a witness on behalf of the Defendant in the above-entitled action now pending in said District Court, and disobedience will be punished as a contempt of said Court, and will also forfeit to the party aggrieved the sum of One Hundred Dollars, and all damages which may be sustained by your failure to attend. By Order of the Court.

Given under my hand and the seal of said Court, this 11 day of April, 1983.

GAYLE STRAUSBURG, Clerk of Court

(COURT SEAL)

By: _____

350 Court Leave (See ELM 516)

351 Definition

Court leave is the authorized absence (without loss of, or reduction in, pay, leave to which otherwise entitled, credit for time or service, or performance rating) of an employee from work status for jury duty or for attending judicial proceedings in a nonofficial capacity as a witness on behalf of a state or local government.

352 Eligibility

352.1 Eligibility Chart

Employee Category	*Eligible*
Full-time	yes
Part-time regular	yes
Part-time flexible	no
Casual	no
Temporary	no

352.2 Noneligibles

Employees not eligible for court leave must use annual leave or LWOP to cover the period of absence from duty for such court service.

352.3 Other Factors

Court leave is granted only to eligible employees who, but for jury duty of service as a witness in a non-official capacity on behalf of a state or local government, would be in a work status or on annual leave. Eligible employees who are summoned for such court service while on annual leave are placed in a court leave status for the duration of the court service. Eligible employees on LWOP when called for such court service are not granted court leave, but may retain any fees or compensation incident to such service.

352.4 Rural Carriers

Court leave for rural carriers is discussed in Chapter 5.

353 Authorization and Supporting Forms

353.1 Installation heads (or their designees) are responsible for ascertaining the exact nature of court service in order to determine whether the employee is entitled to court leave. If a summons to witness service is not specific or clear, the installation head contacts appropriate authorities to determine the party on whose behalf the witness service is to be rendered. (For information as to court service which constitutes "official duty" status, see ELM 516.4.)

353.2 When it is determined that the court service is of such a nature as to entitle an eligible employee to court leave, the employee should initiate a Form 3971 and present it to his supervisor for action. (Employees who are not eligible for court leave for such service also use a Form 3971, requesting annual leave or LWOP, to cover their absence from duty.)

JOHN MELCHER
MONTANA

Burns-Pyl 47 D

United States Senate

June 17, 1983

RECEIVED

JUN 21 1983

OFFICE OF
PRESIDENT

The Honorable William F. Bolger
Postmaster General
United States Postal Service
475 L'Enfant Plaza West SW
Washington, D. C. 20260

Dear Mr. Postmaster:

Because of a technicality in the National Agreement, pertinent section enclosed, a Postal Service employee in Montana was required to take leave without pay, or lose annual leave, because he was subpoenaed to appear in court on behalf of a defendant. By order of the court, he would have been forced to pay $100 to the aggrieved party, plus "all damages, which may be sustained by your failure to attend".

Apparently, if he had been subpoenaed by the State or local government as their witness, he would have suffered no loss of pay. This seems a strange tilt "of justice" on behalf of the State, to say the least.

For example, as interpreted by your managers, a postal worker who witnesses an accident in which a government vehicle collides with a private car as a result of the government driver's negligence, could be called as a witness for the government and suffer no loss of pay. But if subpoenaed by the private driver as a witness for the plaintiff, he would personally suffer loss in pay under threat of a substantial fine if he failed to testify.

Federal employees' court leave is not so restricted, and certainly should not be. Your policy is not only unfair to the subpoenaed postal employee, it is unfair to the litigant who is a private citizen. His witnesses are obviously under a strain not suffered by the State witnesses.

I hope you can take the necessary steps to amend this unfair provision at the earliest opportunity.

Best regards.

Sincerely,

John Melcher

Enclosure

cc: Moe Biller
Morris Harrell
Vincent Sombrotto

WASHINGTON D.C. 20510 (202) 224-2644

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

REGIONAL GUIDELINES

ACCOMMODATION TO EMPLOYEES' RELIGIOUS NEEDS

The Civil Rights Act of 1964, as amended in 1972, prohibits employment discrimination by federal agencies, including the Postal Service, based on religion as well as race, color, sex, age or national origin. 42 U.S.C. 2000e-16. "The term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance practice without undue hardship on the conduct of the employer's business." 42 U.S.C. 2000e(j). The Civil Service Commission, which has the statutory authority to issue regulations binding on the Postal Service and other federal agencies to enforce the anti-discrimination provisions of 42 U.S.C. 2000e-16, has directed that agencies shall:

> Make reasonable accommodations to the religious needs of applicants and employees, including the needs of those who observe the Sabbath on other than Sunday, when those accommodations can be made (by substitution of another qualified employee, by a grant of leave, a change of a tour of duty, or other means) without undue hardship on the business of the agency. If an agency cannot accommodate an employee or applicant, it has a duty in a complaint arising under this subpart to demonstrate its inability to do so . . .
> (5 C.F.R. 713.204(g))

In seeking to apply this general concept to actual situations, there is no apparent mechanical test for determining the circumstances in which a requested accommodation may properly be rejected because it will create undue hardship on the conduct of Postal Service business. Rather, the exercise of informed judgment on a case-by-case basis seems necessary. Following are some general guidelines which may be of assistance in handling particular situations that may arise.

(1) Determine first whether there is a persuasive basis for

denying the employee's request for accommodation on the ground that it is not the result of an honestly held religious belief. Although this factor would be considered, it must be recognized that, in most instances, there is either no reasonable basis, or probably an inadequate basis, for questioning the genuineness of a particular employee's asserted religious convictions.

(2) Ascertain the precise actions that would be required to accommodate the employee's religious needs. In doing so, consider the broadest range of alternatives. Experience to date has indicated that the majority of the requests for accommodation have involved refusals by employees to work on days they designate as their Sabbath. Other requests have involved, or may involve, such matters as dress (for example, wearing a skullcap or a fez), appearance (for example, having a beard or long hair), refusals to work on religious holidays, or requests to attend religious meetings or conventions. In some circumstances, all that is necessary to accommodate the employee is the waiver of a relatively minor uniform regulation or a slight shift in scheduled hours. In other circumstances, thought must be given to more radical alternatives, such as shifting the employee to another tour, another job, or even another installation. The mere fact that such shifts ordinarily have not been permitted is not a sufficient reason to reject that type of action summarily, particularly where it will suffice to accommodate an employee's religious beliefs.

The critical question is whether there is any rational basis for making accommodation possible, and that question must be answered with reference to the Postal Service as a whole and not merely upon consideration of a particular installation. Thus, if a small installation is unable to accommodate the religious needs of a Sabbatarian, but a much larger neighboring installation can, the Postal Service will not be excused from its duty to accommodate merely because the local installation head did not have independent authority to effect a transfer. The matter must be brought to the attention of those officials at the appropriate management level who have such authority. In short, where an accommodation cannot be made at the installation level, it is essential that reasonable efforts to accommodate the employee be undertaken at the sectional center, district, and regional levels.

(3) If an accommodation cannot be worked out by local and regional officials which satisfies the employee, the reasons therefore are to be clearly established and documented. The relevant case file should contain copies of all correspondence and memoranda of all discussions with the employee which were involved in the effort to reach a satisfactory understanding. The file should state, in detail and with precision, the

reasons why the accommodation requested by the employee would create "undue hardship on the business of the agency." In this regard, mere inconvenience will not be deemed to satisfy the "undue hardship" test. Indeed, any accommodation is likely to cause some inconvenience to the employer and create a degree of resentment among other employees. Therefore the showing of more substantial adverse impact must be made in order to provide reasonable support for a refusal to accommodate.

(4) Where the primary bar to accommodating an employee is a Postal Service regulation or the provisions of a collective bargaining agreement, consideration should be given to obtaining a waiver of the regulation from the appropriate higher level postal authority or a waiver of the collective bargaining provision from the appropriate union officials. Although local union officials should be consulted as to their views regarding a possible waiver, no final commitment should be made without approval of the Regional Director, Employee and Labor Relations. Requests for such approval should be included in the memorandum report required by item (6) below.

The most difficult situations to resolve will likely be those in which waiver of a regulation or the provisions of a collective bargaining agreement would have an adverse impact on other employees, as, for example, by infringing on their seniority rights. The law is still unsettled as to whether adverse affect on the seniority rights of other employees provide an employer with a substantial and demonstrable basis for refusing to accommodate an employee's religious needs. The Supreme Court has agreed to review a case which presents that issue - TWA v. Hardison, 45 L. Week 3359 (Nov. 15, 1976) - but a decision is still some months away. However, in the case of Parker Seal Co. v. Cummins, 45 L. Week 4009 (Nov. 2, 1976), the Supreme Court has left in affect, for the present, an opinion by the U. S. Court of Appeals for the Sixth Circuit which held that a company violated Title VII of the 1964 Civil Rights Act, as amended, by discharging a foreman who refused to work on Saturday because of his religious convictions. The company had argued that it had accommodated the foreman until other employees complained about the extra burden such accommodation had imposed on them, and that it had discontinued its practice of permitting the foreman to avoid Saturday work only as a result of those complaints. The Court of Appeals concluded, however, that complaints by other employees were not a sufficient basis to relieve the company of its obligations to accommodate. On review, the Supreme Court affirmed the Sixth Circuit, but did so by a 4-4 vote and without written opinion. Justice Stevens, who had disqualified himself from participating in the Parker Seal case because of a prior

connection with one of the parties, presumably will participate in the Hardison case, which, hopefully, will produce a clear majority view to clarify the issue.

(5) In order to comply with the Privacy Act, 5 U.S.C. Section 552a(e)(7), when an employee requests an accommodation, the local official should secure a statement authorizing the Postal Service to maintain those records that are reasonably required. For example, such a statement might read:

> Recognizing the provision contained in the Privacy Act, 5 U.S.C. Section 552a(e)(7), which with certain exceptions, prohibits any records from being maintained describing how any individual exercises First Amendment rights, I hereby expressly authorize the Postal Service to maintain whatever records shall be reasonably required to accommodate my religious beliefs.

(6) Report, by memorandum, to the Director, Office of Equal Employment Opportunity, all requests for religious accommodation. The memorandum should state the nature of the request, the efforts made to achieve an accommodation, and, either the nature of the accommodation arrived at, or the reasons why a satisfactory accommodation could not be arrived at. Such information should permit Headquarters Employee and Labor Relations to assess the scope of the problem and provide specific guidance as needed.

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ACCOMMODATION TO EMPLOYEES' RELIGIOUS NEEDS

The Civil Rights Act of 1964, as amended in 1972, and various Court decisions to date, places certain obligations on an Employer to reasonably accommodate an employee's or prospective employee's religious belief, provided there is no undue hardship on the conduct of the Employer's business. The law is still unsettled as to precisely what an Employer must do in order to fulfill its obligation to "reasonably accommodate an employee's request." In light of this and the extremely complex legal issues involved, when an employee or applicant for employment asserts his or her religious beliefs and this precludes him or her from working at any particular time, the installation head should, through appropriate channels, immediately request the advice of the Regional Director for Employee and Labor Relations. No action should be taken on the employee's or prospective employee's request without direction from the Region.

Employee Relations Department

ATTACHMENT #0

(4) SENIORITY CANNOT BE IGNORED TO ACCOMMODATE RELIGIOUS OBSERVANCES. ACCOMMODATIONS CAN BE MADE BUT NOT INCONSISTENT WITH CONTRACT.

Since the publication of Postal Bulletin, May 19, 1977, the Supreme Court has issued an opinion interpreting the Civil Rights Act of 1964, as amended. This decision clarifies the problem covered by the Postal Bulletin.

The Supreme Court on June 16, 1977, in a case, which has come to be known as the Hardison case, decided that where an employer had entered into a collective bargaining contract containing seniority provisions, the seniority provisions would prevail. Hardison was a member of a religious organization known as the Worldwide Church of God. One of the tenets of that religion is that one must observe Sabbath by refraining from performing any work from sunset on Friday until sunset on Saturday (the religion also proscribes work on certain specified religious holidays). Hardison refused an assignment to work on Saturdays. He was employed by TWA which had a collective bargaining agreement with the Machinists. Section 703a(1) of the Civil Rights Act of 1964, Title VII, 42 U.S.C. 2000e 2(a)(1) makes it an unlawful employment practice for an employer to discriminate against an employee, or a prospective employee, on the basis of his or her religion. The Act itself also provides that an employer short of "undue hardship" make "reasonable accommodations" to the religious needs of its employees. The issue in this case was to determine the extent of the employer's obligation to accommodate an employee whose religious beliefs prohibited him from working on Saturdays where there existed a collective bargaining agreement, which included seniority provisions.

The Court spelled out its interpretation quite clearly in the following language:

> "Hardison and the EEOC insist that the statutory obligation to accommodate religious needs takes precedence over both the collective bargaining contract and the seniority rights of TWA's other employees. We agree that neither a collective bargaining contract nor a seniority system may be employed to violate the statute, but we do not believe that the duty to accommodate requires TWA to take steps inconsistent with the otherwise valid agreement. Collective bargaining, aimed at effecting workable and enforceable agreements between management and labor, lies at the core of our national labor policy, and seniority provisions are universally included in these contracts. Without a clear and express indication from Congress, we cannot agree with Hardison and the EEOC that an agreed-upon seniority system must give way when necessary to accommodate religious observances."

How will this decision affect the APWU? The answer now is clear. The seniority provisions of the collective bargaining agreement would prevail.

Donald M. Murtha