

ACTIVIST

NALC

A NEWSLETTER FOR BRANCH LEADERS OF THE NATIONAL ASSOCIATION OF LETTER CARRIERS
VOL. 23, NO. 2 Summer 2010

JARAP...

New Agreement, training and resources

The Joint Alternate Route Adjustment Process (JARAP) MOU and related agreements govern the joint methods by which city delivery routes will be adjusted for 2010 through February 28, 2011.

There are four new agreements along with 13 training and resource documents associated with JARAP. The JARAP guidelines provide for additional training with a comprehensive explanation of the roles and responsibilities of route adjustment teams and local office contacts.

The joint training and resource guide includes examples of USPS reports to be reviewed by teams to help identify data integrity issues. All of the JARAP related documents are located on the NALC website assigned with the following NALC Material Reference System (MRS) numbers. A listing can be found on page 5.

Key changes

Training and information in JARAP:

Provides responsibility for joint training on JARAP for the area/regional teams (ARTs), the District Lead Teams (DLTs) and the District Evaluation and Adjustment Teams (DEATs). (M-01720)

A Joint Training and Resource Guide was authored by the national parties, including a COR Power-Point presentation. (M-01731)

A list of local office contacts' (LOCs) responsibilities was created jointly at the national level and will be provided to the LOCs by the DEAT. (M-01722)

An informational stand-up session, jointly authored at the Headquarters level, will be provided in each delivery unit that has routes selected for JARAP. (M-01721)

Selection of routes/zones for JARAP:

Prioritization of routes evaluated under the last phase of MIARAP, where the initial carrier consultation was given and the DEAT determined that the route was out of adjustment. These routes will be evaluated, using both the MIARAP evaluation period and data from March 2010, and will be adjusted (if necessary) before other routes in JARAP are adjusted. (M-01719)

(Continued on page 5)

INSIDE

One Day Mail Counts. 2

Save Sat. Delivery.... 4

Salaries, Stipends and Lost Time 6

Undisputed Facts 8

Arbitrator Sends Postal Service Strong NRP Message..... 10

Keep Your Cool 12

Have you updated your contact information yet? If you have, thank you — you don't need to do it again. If not, fill in the form included in this issue and send it in! Starting January 2011, the *Activist* will only be mailed to those who've updated all of the requested information.

YOUR CONTRACT

One day mail counts

Questions recently have arisen about one day counts: when and why they are conducted, and how the results can be used. Some carriers are concerned that the information will be used to evaluate and adjust their routes. The applicable language from the *M-39 Handbook* and the JARAP Memorandum of Understanding (MOU) is clear, and will be discussed below.

Language from the *M-39 Handbook* (Figure 1) can be applied by postal management solely to check the proficiency of a letter carrier, but cannot be used for the purpose of adjusting a letter carrier route[s].

The provisions of the Joint Alternative Route Adjustment Process [JARAP] [MRS #M-01717] agreement (Figure 2) establish the fact that as long as none of the circumstances occur that cause termination of the JARAP agreement, the only means of evaluating and adjusting letter carrier routes is by application of the JARAP agreement.

Additionally, the language in the jointly developed guidelines for the JARAP process [MRS #M-01720], inserted below the last of the paragraphs from the JARAP agreement included in Figure 2 states:

In any unit where the Area/Regional Team jointly agrees that this process/methodology cannot be applied, they will jointly contact the National Oversight Team to discuss an alternative joint process to evaluate and adjust the routes.

M-39 Handbook, *Administration of City Delivery Service* 141.2 Special Office Mail Counts

When management desires to determine the efficiency of a carrier in the office, a count of mail may be made. The carrier must be given one day's advance notification of this special count. Use Form 1838-C to record count and time items concerned. The carrier must be advised of the result of the office mail count.

Fig. 1.

M-30 Handbook

Any data from route inspections conducted pursuant to Section 271 of Handbook M-39 in a zone selected for evaluation under this agreement will be forwarded to the appropriate District Lead Team for assignment to a District Evaluation and Adjustment Team for adjustment during the next analysis and implementation period for that delivery unit provided the time limit/extension provisions of Handbook M-39, Section 211.3, for implementing any necessary adjustments resulting from these inspections is adhered to.

Additionally, the District Lead Team may mutually agree to assign a District Evaluation and Adjustment Team to implement the results of any other route inspections conducted pursuant to Section 271. Any questions over the preceding sentence will be discussed with the Area/Regional Team.

While under the JARAP agreement, the two exceptions to adjusting letter carrier assignments occur:

- 1) when the National parties have agreed to authorize an alternative method, submitted to them by the local parties, pursuant to the Memorandum of Un-

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Fredric Rolando, President



derstanding for the Alternative Route Adjustment Processes [MRS #M-01718] or

2) where a letter carrier assignment has no casing or delivery of mail on it.

As indicated in the Joint Guidelines for JARAP:

Evaluation and adjustment of collection and parcel post routes that do not include any casing and delivery of mail are

not covered by this agreement. Evaluation and adjustment of these types of routes will be handled pursuant to the relevant provisions of Handbook M-39. However, when a collection or parcel post route includes the casing or delivery of mail, it is covered by this agreement. Additionally, when a collection or parcel post route that does not include casing and delivery of mail is going to be adjusted to include the casing or

delivery of mail, the inspection paperwork of the collection or parcel post route will be given to the District Evaluation and Adjustment Team to include in their adjustment package under this process.

Hopefully, the above discussion clears up any misunderstanding which carriers in your branch may have. One day counts can only be used to check the proficiency of a letter carrier, and for no other purpose.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS

Re: Joint Alternate Route Adjustment Process

In accordance with the Memorandum of Understanding Re: Alternate Route Evaluation Process, the parties agree to the following:

...

If mail volume continues to decline during the life of the current National Agreement, the parties agree to evaluate and adjust city delivery routes through a new jointly developed expedited evaluation and adjustment process, unless the parties mutually agree to use the Joint Alternate Route Adjustment Process outlined in this Memorandum of Understanding. Additionally, if annual mail volume increases during the remaining term of the National Agreement, city delivery routes will be evaluated and adjusted in accordance with the expedited process agreed to pursuant to this paragraph.

...

Either party may terminate this agreement if 1) the Postal Service implements a route adjustment process other than as provided by this agreement, pursuant to Section 271 of Handbook M-39, or by mutual agreement; 2) the Memorandum of Understanding Re: *Assignment of City Delivery* is terminated pursuant to the last paragraph of that MOU; 3) either party fails in good faith to live up to its obligations under the Memorandum of Understanding Re: *Assignment of City Delivery* or 4) the Memorandum of Understanding Re: *Assignment of City Delivery* is invalidated, in whole or in part, by a decision of an arbitrator, a court, the National Labor Relations Board or by any other forum.

Fig.2

JARAP MOU

What you can do to . . .

Save Saturday delivery

This summer NALC is mounting a multi-faceted campaign to preserve the long-term viability of the Postal Service. In June, President Fred Rolando launched the “Save Saturday Delivery” campaign with a national mailing to branch leaders and state-level legislative activists. Included is a comprehensive toolkit designed to help local leaders weigh in with Congress on the need to keep Saturday delivery and mobilize support for our position with the Postal Regulatory Commission (PRC).

“This fight cannot be won in Washington alone,” President Rolando said. *“We need every member to help us prevail -- giving up Saturday delivery is the most short-sighted thing we could do, we must stop the Postal Service from making such a big mistake,”* he added. The *Save Saturday Delivery* toolkit, which by now should be in your branch, contains fact sheets, talking points and instructions for activists.

Congressional district liaisons (CDLs) and state legislative chairs will organize in-district visits with members of Congress and Senators and organize letter writing campaigns aimed at key legislators. Meanwhile, branch leaders will conduct community outreach to encourage opposition to the elimination of Saturday delivery, both in Congress and within the Postal Regulatory Commission.

The PRC is conducting a formal review of the USPS proposal for weekday-only collections and delivery. Six hearings were held nationwide in May and June, at which

concerned parties and interested citizens got the chance to express their views on this crucial issue. Transcripts of each hearing are available on the PRC’s web site (<http://www.prc.gov>). The PRC’s advisory opinion, which will be released by the end of the year, could be influential in Congress – the only body with the power to approve the USPS plan.

The NALC believes that eliminating Saturday delivery would do more harm than good – it will simply push more mailers out of the postal system by making it less valuable. *“Slower service and higher rates is not a business strategy,”* Rolando said. *“Congress must reform the retiree health pre-funding provisions of the law. And we must do our part to preserve the excellent level of service we provide, six days a week, and seek to add new services that will generate new revenue for the USPS.”*

Through the “Save Saturday Delivery” campaign, NALC aims to educate members of Congress as well as the general public about what it’s really going to take to fix the Postal Service. *“The Postal Service is a vital national service and we have a responsibility to fight for its future,”* Rolando said.

The PRC’s support of Saturday delivery will be key in getting Congress to maintain six-day delivery. In addition to the hearings, the PRC is collecting public comments on the issue of Saturday delivery via their web site. This is one way that every NALC member can get involved in the fight. Letter carriers



and their families should visit the PRC’s website and submit a comment in support of Saturday delivery. Just click on the “Contact PRC” link in the upper right corner of the PRC page. Or you can go to the NALC’s website (<http://nalc.org>), which has a link to help you make your comments to the PRC. Based on your own experiences, using your own words, please explain the importance of Saturday delivery to you, your postal customers and the community you serve.

If you are not a state chair, branch president or a CDL and would like to do more for the “Save Saturday Delivery” campaign, contact your branch president or the Department of Legislative and Political Affairs at NALC HQ (202-662-2833) to find out what else you can do. Together we can save Saturday delivery and the Postal Service.

JARAP

(Continued from page 1)

Each member of the DLT will individually select routes/zones to be analyzed and adjusted. Those routes/zones will be analyzed and adjusted and then reviewed during designated time frames set forth in the agreement. The adjustment process will conclude on February 28, 2011.e. The NALC DLT member's selection will be based on input from the members through the NBA office.

Data integrity:

Emphasis on ensuring that all reports necessary to check on and address data integrity problems are available for the DEATs to review.

Access to Postal Service electronic data base to ensure that agreed-to adjustments are entered into the system as agreed.

A jointly agreed-to formula at the headquarters level will be used to project estimated standard time for office evaluations.

The following forms should be reviewed to ensure data integrity:

Steward, Standby and Meeting Time Report (M# 01726). Reviewed to ensure hours are properly assigned under Steward Time (613), Standby Time (354) and Meeting Time (782).

TAC100R2 v2.002 Operation Summary Report (M# 01727). Reviewed to identify how hours are being distributed to all the different operation numbers. Excessive hours under 354, 782, 743 or 738 should be identified and validated for accuracy.

Flash Report (M# 01728). Spikes in L/C 23 (Other) should raise a red flag that hours may be assigned improperly to operations not credited to work performed on a route or assignment. Attention

JARAP-Related Documents

M-01717: The JARAP 2010 National Memorandum of Understanding (NMOU)

M-01718: NMOU on Alternative Evaluation and Adjustment Processes.

M-01719: A National Memorandum of Agreement (NMOA) regarding delivery units not finalized under MIARAP—2009

M-01720: The joint guidelines to JARAP, including the MOU language.

M-01721: Nationally developed stand-up talk on JARAP to be given to employees.

M-01722: The duties and responsibilities of the local office contacts that they are to be provided under JARAP.

M-01723: The evaluation consultation script to be used by the local office contacts during the initial consultation with the letter carrier.

M-01724: The adjustment consultation script to be used by the local office contacts during the adjustment consultation with the letter carrier.

M-01725: PDF file of the Joint Training on JARAP, originally given to the JARAP Area/Regional Teams by the JARAP National Oversight Team on May 3, 2010.

M-01726: A Postal Service Steward, Standby and Meeting Time Report, as included in the USPS/NALC JARAP Training and Resource Guide - May 2010.

M-01727: A Postal Service Time and Attendance Collection System [TACS] Operation Summary Report, as included in the USPS/NALC JARAP Training and Resource Guide - May 2010.

M-01728: A Postal Service Flash "Last 4 Weeks" Report, as included in the USPS/NALC JARAP Training and Resource Guide - May 2010.

M-01729: A list of Postal Service Management Operating Data System [MODS] operation codes and descriptions, as included in the USPS/NALC Joint Alternative Route Adjustment Process Training and Resource Guide - May 2010.

M-01730: Postal Service Delivery Operations Information System [DOIS] instructions for downloading a PS Form 3999 into DOIS, as included in the USPS/NALC JARAP Training and Resource Guide - May 2010.

M-01731: PDF file of the Carrier Optimal Routing [COR] PowerPoint presentation, as included in the USPS/NALC JARAP Training and Resource Guide - May 2010.

M-01732: The Table of Contents of the training and resource items related to the USPS/NALC JARAP.

M-01736: USPS/NALC JARAP Joint Training and Resource Guide. This 238-page, 16.5 MB PDF merges all Joint Alternate Route Adjustment Process (JARAP) documents into one single file.

should also be paid to fluctuations in volumes. This high level report can alert a team to drill down further and request additional information to validate the accuracy of the times and volumes being recorded.

MODS operation Numbers Listing (M-01729). Used in conjunction with TAC reports to provide a description of each operation code used.

DOIS 3999 Audit Trail Report (M-01730). Reviewed to show any changes to times on the 3999.

Increased communication:

Between the DEATs and the LOCs and also the DLTs and the DEATs.

(Continued on page 14)

SECRETARY TREASURER

Getting ready for Anaheim . . .

Salaries, stipends and lost time

In the March issue of the *Activist*, we explained some general rules and guidelines for paying for members' expenses while attending conventions. While the earlier article only considered trips to NALC's biennial convention, these same rules also apply to attendance at training sessions or while on other union business. In this issue we will discuss some of the more important rules that apply when an individual is compensated for spending time at the convention or performing other functions at the direction of the branch.

Please note that this is not a complete statement of all the state and federal tax rules that apply to NALC branches. It is the responsibility of each branch to obtain detailed information about its own particular tax obligations and to comply with tax laws.

Although NALC branches are considered tax-exempt non-profit organizations by the IRS, this does not mean that branches or the individuals they pay operate in a tax-free world untouched by the IRS or state tax authorities. NALC officials are responsible for tax compliance in two ways. First, they are *fiduciaries* who must insure that branch funds are handled in compliance with applicable tax laws. Second, NALC officers, stewards, delegates, etc. receive payments as *individuals*, and it is essential that they comply as individuals with the tax rules.

Payments to individuals

When a branch pays an individual for performing a service certain tax laws apply to the branch as well as to the individual. How these laws apply depends upon the employment relationship between the branch and the individual who receives a payment.

The IRS considers individuals paid by the branch to be either "employees" or "non-employees" (aka-independent contractors). This is an important distinction as the tax consequences are very different. No hard and fast rules tell us who is considered an employee and who is an independent contractor, but the IRS will use certain criteria to determine whether or not there is an employment relationship. The IRS will evaluate whether:

- The member's compensation is based on some time factor such as by the hour, by the day, by the week.
- There is a continuing working relationship between the member and the branch.
- The branch provides materials, equipment or facilities used by the member in performing these services.
- The branch supplies training and or instruction to the member.
- The member performs these services solely for the branch (and not for others).

Although the employment status of an individual is governed by the facts of each case, IRS rulings have been consistent concerning three types of union workers: officers, stewards and convention delegates.

Based on the factors listed above, local union officers and stewards are considered to be *employees* by the IRS. They are usually paid based on some time factor, there is a continuing relationship, the branch supplies them with materials, facilities and training and the member performs this work exclusively for the branch. Other members, who are compensated for regular services performed for the branch, such as MDA coordinator, assisting the newsletter editor, branch scribe, etc. are also considered *employees* by the IRS.

Convention delegates are generally considered *non-employees* by the IRS when this is the **only** service they perform for the branch. As will be discussed below, the payment they receive is handled differently by the branch than that paid to employees. The IRS will likely find that the pre-existing employment status of a branch officer, a shop steward and other regularly compensated member will extend to the payments made for attending a convention.

Once the branch determines the employment status of a member, it will know the tax obligations of the different types of payments made to those members.

Tax obligations for the branch

Any regular payment made to an officer or steward or other member, no matter if it's called salary, stipend, lump-sum, lost time reimbursement, meeting attendance payment, dues reimbursement or some other term, is considered *wages* by the IRS. When a branch makes such payments, it becomes an "employer" in the eyes of the IRS and state tax authorities. As an employer, the branch must pay taxes on salary payments and withhold and submit to the appropriate authorities amounts withheld from employee wages. The branch must:

1. Pay its share of federal social security taxes (FICA);
2. Withhold and submit the employee's share of FICA tax;
3. Pay federal unemployment tax on the employee wages;
4. Pay the state unemployment tax on the employee's wages;
5. Withhold and submit the employee's federal and state income taxes;
6. If necessary, pay worker's compensation insurance premiums for the employee.

Branches must also maintain and complete the proper tax forms for each employee such as W-4, W-2, and INS Form I-9. At year end, employees must be provided with Form W-2 showing wages paid and amounts withheld. For more information on employer tax rules, see Chapter 4 of the *NALC Branch Officers Guide to Finance and Administration*, (available at nalc.org or by ordering a hard copy from the NALC Supply Dept.), contact the IRS or visit its website, www.irs.gov.

While there are many experienced branch secretary-treasurers who do this on a regular basis without any difficulty, withholding the correct amounts and making the timely payments can be a daunting process. For those who are not so confident, numerous resources are available on the internet and computer programs can be purchased to assist a branch in managing its payroll. Payroll service companies will handle a branch's payroll for a fee. Each branch should determine what is best for it.

Tax consequences for the individual

Just like all other wages received during the course of a year, including those paid by the Postal Service, an individual receiving any amount of wages from the branch must report this to the IRS and the appropriate state tax authority and pay the income tax due after accounting for taxes previously withheld by the branch.

Convention payments to non-employees

Conventions force the branch to deal with members who receive

payments from the branch that are not considered wages and are not subject to payroll taxes. A convention delegate who serves neither as an officer or steward and who performs no other services for the branch is paid for lost time while on leave from the Postal Service to attend a convention. In such cases, the payment would not be considered wages subject to payroll withholding. Instead, the branch would pay the compensation to the individual in gross (no withholding). If the payments to a delegate in a calendar year are \$600 or more, the branch must submit Form 1099-MISC to the delegate and the IRS at year end.

While such payments to non-employees are not considered wages by the IRS, they are considered income for the individual. It does not matter whether the total amount received during the year was over or under \$600. The individual recipient must report all income received and pay any taxes due.

Summary

Under tax laws, NALC Branch officers and stewards and other

(Continued on page 11)



Undisputed facts

Line 16 of the grievance form (Joint Step A Grievance Form 8190) asks for undisputed facts. So just what is an undisputed fact? Undisputed facts are statistics, information, data, or events that the parties agree are true or did occur. The purpose of listing undisputed facts is to narrow the focus to what the grievance is really all about. It probably doesn't seem like it at times, but in most grievances the parties have more in common than might at first appear.

No case should be advanced without undisputed facts. Even in the most contentious case, there are many facts that the parties should be able to agree are not in dispute.

The local union and management designees can go a long way toward resolving those areas in which there is conflict if they will first try to identify those relevant facts that are not in dispute.

In some cases, the basic facts are not in dispute. The parties essentially agree what happened but they disagree whether what happened was a violation of the contract. Occasionally, the parties will agree that a violation occurred but they disagree on what to do to fix it. In these types of cases, the parties should be able to compile a long list of undisputed facts.

In many cases, however, the parties disagree on crucial facts. Even in these cases there are many other relevant facts which should not be in dispute. These should be listed on or preferably attached to the 8190.

Experience has shown that often managers may be reluctant to agree to a written narrative right up front. It's just too much for them to swallow in one gulp. But they usually are not as intimidated if you break the story down into individual facts (bites) and go over them one at a time. The following steps will help you do that.

Prepare a facts/ evidence worksheet

To help you prepare for a manager who is reluctant to agree to undisputed facts, create a Facts/Evidence sheet. Divide several sheets of paper into two columns. In one column, list all of the relevant facts that you have discovered during your investigation. In the second column, list the documentary evidence you have that proves each of the facts that you have written in your narrative. Figure 1 contains an example. Please note this is just an example. In a real medical certification case, you would certainly have more than just these six fact statements.

Once you have completed your list, you will need to make copies of each of the documents listed in the right-hand column as you will provide these to management during the Formal A meeting.

Fig. 1 **FACTS/EVIDENCE WORKSHEET**

Facts	Evidence
Grievant is the regular on Rt. 3201 which has rotating days off	Bid sheet, schedule, grievant's statement
Grievant called in sick on Saturday	Grievant's statement 11/17/07 Supervisor's statement Interview notes
Supervisor Smith took the call and told him to obtain medical certification	Supervisor's statement Interview notes
Grievant went to the doctor and got a slip excusing him for the day	Grievant's statement Doctor's note
Grievant's co-payment for the doctor visit was \$25	Doctor bill, receipt
Mileage from grievant's home to the doctor's office, and return is 15 miles	Addresses, Mapquest

Prepare a draft list of undisputed facts

Now that your Facts/Evidence worksheet is completed, on a separate sheet of paper prepare a second list of the undisputed facts to which you want management to agree at the grievance meeting. This is your "Draft List of Undisputed Facts." The facts on this list should be identical to those on the Facts/Evidence list. It is a good idea to leave some space between the fact statements in the draft to allow for any corrections or changes that might occur during the meeting. You should also make a space for each fact to be initialed by you and the supervisor if you agree it is undisputed. What such a list might look like can be seen in Figure 2. Again, this is an abbreviated list offered as an example. Your list should be much longer.

Using the draft list

At the Formal A meeting, slowly go down your previously prepared draft list of undisputed facts one fact at a time with the manager and sign off on the ones he/she can agree to outright. If you come to a fact that the supervisor is reluctant to agree to, look to your two-column Facts/Evidence List and show the manager the evidence supporting that fact and use that to try to convince him/her to agree it is undisputed as well. If the supervisor still will not agree, don't get bogged down, just say something like, "*Okay, we'll get back to this later,*" and move on to the next one.

You don't want to dwell in negative territory; you want to keep the manager in an agreeable mood. If you get hung up on a fact the supervisor disagrees with, you may not get to others that could have been signed off. So, if you

Fig. 2

DRAFT LIST OF UNDISPUTED FACTS

U	M	
_____	_____	1. The Grievant is the regular on Route #3201, which has rotating days off
_____	_____	2. He called in sick on Saturday, 11/17/07
_____	_____	3. Supervisor Smith took the call and told him to obtain medical certification
_____	_____	4. The grievant went to the doctor and got a slip excusing him for the day
_____	_____	5. The grievant's co-payment for the doctor visit was \$25.00
_____	_____	6. Grievant's home to doctor's office is 15 miles round-trip

run into a "*No*"... skip it and move on to the next fact.

When you reach the bottom of the list, go back over the ones that you've skipped and try again. If the supervisor still will not agree, ask them to tell you what evidence he/she would need to be able to agree. Then suggest that you jointly try to obtain it.

Occasionally, managers will have some undisputed facts of their own that they would like to have included in the file. Take time to consider these and include them if you know for certain that they are true. If you have reservations about agreeing to a fact as undisputed, ask the manager to provide you with some documentary evidence that proves it, just like you did with yours. If in the end you are not sure, or you just don't feel comfortable agreeing to it, then don't.

Once the list of undisputed facts is completed, some stewards like to prepare a final list of the undisputed facts which both parties sign to confirm agree-

ment. This is fine, so long as the new list is legible and signed by both parties. However, the original draft list should also be identified and included in the file.

It is unlikely that management will agree to all of your facts. They may not agree to any of them. If that is the case, a copy of your draft list definitely should be included in the file as evidence of the union's efforts to get management to agree. If you are unable to resolve the case and it gets appealed to Step B, these will become your disputed facts and you will have to argue why they should be accepted as factual in the "Union's Disputed Facts and Contentions" portion of the Joint Step A Grievance Form.

Remember, there is something you can agree to. Agree that the grievant was issued discipline on this date. Agree to what the charge was. Agree to who is on the ODL list and who isn't on the ODL list. Agree that the grievance was timely filed or that an extension was agreed to. Again, in

(Continued on page 11)

Arbitrator sends Postal Service strong NRP message

The Postal Service's National Reassessment Process (NRP) has been the subject of two national level disputes initiated by the NALC (M-1550 & M-1706). Both have been resolved. The Postal Service has acknowledged that its obligations under ELM 546.142 have not changed. The ELM 546.142 requires the Postal Service to make every effort towards assigning limited duty and to minimize the adverse effect on injured employees.

Despite the two national level settlements, in many cases local management continues to implement NRP in ways that violate ELM 546.142. A recent decision by Arbitrator Kathy Eisenmenger - E06N-4E-C 09370199 (C-28732) - is significant because the arbitrator methodically addressed and rejected each of the Postal Service's arguments.

The facts in the case before Arbitrator Eisenmenger included a No Work Available (NWA) decision upon implementation of NRP despite 10 years of successful limited duty work in Cheyenne WY.

The arbitrator rejected local management's application of a new NRP "necessary work" standard. She wrote:

What did precipitate the Grievant's release from duty was the Postal Service's implementation of the NRP that inserted the new criteria or standard limiting Management in considering whatever work was to be assigned to injured

employees to be "necessary" work....

This standard lies outside ELM Section 546.141.... the Postal Service utilized an erroneous standard in its exercise under ELM 546.142 that fatally flawed the entire process... From an evidentiary standpoint, the criteria of "necessary" work has been created in contravention of the applicable contractual statutory and regulatory provisions that apply to situations such as the Grievant's.

The arbitrator adopted Carlton Snow's shifting burden of proof holding in Case No. F90N-4F-C 96026953 (C-20901). Arbitrator Snow stated:

The parties have incorporated into their labor contract a system with a shifting burden of proof. It can be summarized as follows: 1. The Union must prove that an employee suffered an on-the-job injury; that the facts of the case are covered by ELM Section 546.141; and that management failed to follow the "pecking order" set forth in the ELM for this kind of situation. 2. The burden, then, shifts to the Employer to produce evidence showing that management made a good faith effort to place the grievant at each level of the "pecking order" above the level at which an individual ultimately was placed; and 3. The Union, then, had the burden of proving that work, indeed, was available for a grievant at a level of the "pecking

order" above the level which management placed the employee.

Arbitrator Eisenmenger dismissed the Postal Service argument that it did not have to provide the grievant work due to a lack of "tangible product" as referenced in the EL-505. She held that the Postal Service reference to "tangible product" seemed misplaced because the Postal Service is not a manufacturing entity and produces no "product" as that term is commonly used in industrial relations. Instead, she ruled:

I find that the delivery of Express Mail to constitutes a tangible product as intended under EL-505... Likewise, the delivery of certified and registered mail consists of a tangible product...

In addition, the arbitrator referenced other duties, such as collections, delivering cuts to carriers, delivering hot case mail as tangible work.

The arbitrator made short work of the Postal Service argument that the grievance was substantively outside the jurisdiction of the negotiated grievance procedure, particularly as it related to remedy. She quickly disposed of this argument:

I find that this grievance pertains directly upon the application of Postal Service regulations... As such, Article 15 is an appropriate mechanism to enforce those rights granted to injured employees...

She rejected the Postal Service assertion that the work could not come from a bid assignment:

...the re-allocation of duties from some personnel to the injured employee squarely complies with the Service's obligations to provide reasonable accommodation and to assign limited duty.

The arbitrator dismissed the Postal Service argument that it was more efficient to have other employees deliver Express Mail, noting the argument was irrelevant and pointing out the Rehabilitation Act reasonable accommodation obligation. She dismissed the Postal Service argument that collections was make work, pointing out that that work is needed to fulfill the mission of the Postal Service. She also noted that nothing precludes the Postal Service from assigning work that occurs on an ad hoc basis.

Arbitrator Eisenmenger ordered the Postal Service to return the grievant to the limited duty assignment he was performing prior to the NRP withdrawal and to make him whole. She noted that the Postal Service was not precluded from again reassessing the grievant's situation, provided the reassessment was done in strict compliance with ELM 546.142, and provided it complied with her order to:

...cease and desist from utilizing the erroneous standard of necessary work as the Postal Service has improperly restricted its meaning.

This important case is a must read for any union activists and grievance processors who handle NRP cases. ■

Salaries, stipends and lost time

(Continued from page 7)

members who regularly perform work for the branch will likely be classified as employees of the branch. A convention delegate is considered an employee only if he or she is an officer or steward or otherwise performs work for the branch which establishes an employment relationship. Payments made to employees are considered wages by the IRS and are subject payroll taxes. Payments made to non-employees are not considered wages and are not subject to payroll taxes; however, they are considered income for the individual and are subject to income taxes.

If you are unsure whether or not a particular member should be considered a branch "employee" under the tax laws, it is strongly recommended that you consult a professional accountant or tax advisor. A branch can also obtain a determination from the IRS about a member's employment status by submitting a Form SS-8, *Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding*. ■



Undisputed facts

(Continued from page 9)

some cases you may agree that there was a violation of the national agreement but you don't agree what the appropriate remedy should be. All of these things would be appropriate for undisputed facts.

Also, make sure that your undisputed facts, and your contentions for that matter, are clear. Remember, if this grievance is appealed to a higher level someone else from outside of your office won't know that everyone calls John Jones, "Bubba." If you agree in your undisputed facts that Bubba is on the ODL list, that won't help the B team to make the right decision on your grievance. They won't be able to find clock rings for Bubba and the clock rings they do see for John Jones will be meaningless to them. Tell the parties at the higher level who the PTFs are, who the TEs are, and that Sam Hill just transferred in from another state. You get the picture?

Finally, to the extent possible, make sure that you have evidence in the file to document that your undisputed facts are true such as the ODL list, the seniority list, the notice of suspension, the time records, and the interview notes. Not only will you use these items to help management agree to the facts, remember just because you agreed at the local level that something is undisputed doesn't mean that down the road someone else won't feel the need to dispute an item. If you have the proper documentation in the file then it should not be a problem. ■

When faced with unreasonable expectations:

Keep your cool

Our lives are full of confrontations and frustrations as we juggle personal, financial and career obligations. These everyday occurrences accumulate as stresses to our minds and bodies. Although small amounts of stress can actually work as a motivator and drive a person to achieve, the physical and mental well-being of someone continually under a high level of stress will suffer. Stress needs to be taken seriously: a letter carrier in this situation should consider seeking professional medical help. No one at the NALC is a doctor, and we certainly can't offer medical advice. The following article summarizes general information on stress, which can be found on the internet, in EAP material and at your local library. It concludes by discussing possible contractual responses to a stressful workplace.

One of the most common situations that cause stress we hear about from our members is an

overbearing supervisor with unreasonable expectations about the time it will take a letter carrier to complete a daily assignment. Being issued orders that cannot be complied with puts letter carriers on the defensive for a number of reasons. People who must explain why time expectations cannot be met may feel their integrity is being questioned. The stress levels of a carrier who is continually rushed or squeezed to perform work at an unreasonable pace can remain elevated through the entire work day. The fear of disciplinary action or retribution, whether implied or imagined, only adds to this already stressful situation.

Medical web sites such as the US government's Medline Plus (<http://www.nlm.nih.gov/medlineplus/>) report that people who remain under high levels of stress for long periods of time may put themselves at risk for health

problems. Health problems arising from stress may include:

- Sleeping disorders
- High Blood Pressure
- Heart disease
- Gastro-intestinal problems
- Obesity
- Depression
- Memory loss

Taking control

It's virtually impossible to eliminate stress completely. People

Box 2

122.33 The employee, upon request, will be provided a Form 3996, *Carrier-Auxiliary Control*, after the supervisor has been verbally informed as to the reason for the request. The employee shall not be denied the form and, upon request, a duplicate of the completed form will be provided the employee.

can, however, identify what makes them stressed and attempt to manage those situations. Stress doesn't have to be handled alone. A visit to a personal physician or a call to EAP is a good first step.

Common approaches often recommended by doctors to manage stress include:

- ... Practice relaxation techniques
- ... Get plenty of rest
- ... Exercise regularly
- ... Grow and maintain strong friendships and family relationships

Box 1

131.4 Reporting Requirements

131.41 It is your responsibility to verbally inform management when you are of the opinion that you will be unable to case all mail distributed to the route, perform other required duties, and leave on schedule or when you will be unable to complete delivery of all mail.

131.42 Inform management of this well in advance of the scheduled leaving time and not later than immediately following the final receipt of mail. Management will instruct you what to do.

131.43 Complete applicable items on Form 3996, *Carrier-Auxiliary Control*, if overtime or auxiliary assistance is authorized in the office or on the street.

Box 3

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

...Leave for work early (to avoid commuting hassles)

...Talk about what your stresses with a friend or coworker

...Take proactive measures to resolve workplace confrontations (file a grievance, seek redress with the supervisor)

...Minimize or quit the use of alcohol and tobacco products

... Eat healthy foods and drink plenty of water

The branch leader's role

While the normal response to stress may be to get angry, encourage letter carriers to limit their reactions to those that are strictly professional. Set an example by taking the high road with management even in the most difficult circumstances. Coworkers are watching to see how their union leadership deals with these same conflicts for themselves. Showing carriers the appropriate way to be assertive can help them change potentially stressful situations into ones of self-empowerment.

Asserting contractual rights

Letter carriers can't prevent supervisors from attempting to apply unreasonable time expectations. Letter carriers can, however, assert their right and responsibility to in-

form management of their inability to complete their assignment within management's estimated time. The applicable language is located in Handbook M-41, *City Delivery Carriers Duties and Responsibilities*, Section 131.4. (See box 1 on page 12.)

Handbook M-39, Management of Delivery Services contains the supervisor's instructions to provide the PS Form 3996 after a verbal request is made. (See box 2 on page 12.)

After a carrier has submitted a PS Form 3996 request, management

Box 4

DELIVERY OPERATIONS INFORMATION SYSTEM

(DOIS) SETTLEMENT

Q01N-4Q-C 05022610 (M-01664)

After reviewing this matter, the parties agree to resolve this dispute based on the following: The Delivery Operations Information System (DOIS) is a management tool for estimating a carrier's daily workload. The use of DOIS does not change the letter carrier's reporting requirements outlined in section 131.4 of Handbook M-41, the supervisor's scheduling responsibilities outlined in section 122 of Handbook M-39, or the letter carrier's and supervisor's responsibilities contained in Section 28 of Handbook M-41. DOIS projections are not the sole determinant of a carrier's leaving or return time, or daily workload. As such, the projections cannot be used as the sole basis for corrective action.

is obligated under Article 41.3.G. of the National Agreement (Box 3 to the right) to advise the carrier of their decision after reviewing the present circumstances. A letter carrier can file a grievance when management fails to provide disposition of a submitted PS Form 3996.

Inform the membership of the protections found in the DOIS settlement. An objection should be raised and the appropriate grievances filed when management uses DOIS as the sole basis for determining leaving and return times. Management's use of DOIS is restricted by the DOIS settlement as explained in box 4 below.

Maintaining mutual respect

Union leaders need to be aware of how the current management style affects the morale of employ-

(Continued on page 14)

Box 5

115.4 Maintain Mutual Respect Atmosphere

The National Agreement sets out the basic rules and rights governing management and employees in their dealings with each other, but it is the front-line manager who controls management's attempt to maintain an atmosphere between employer and employee which assures mutual respect for each other's rights and responsibilities.

EAP - WHEN IT'S TIME TO ASK FOR HELP. At varying times in our lives we must face personal problems. Some problems are more easily resolved than others, but many can best be solved with professional assistance. In response to this need, an Employee Assistance Program (EAP) is provided by the USPS through an Interagency agreement with Federal Occupational Health for employees and their families. EAP information or assistance is available 24 hours a day, 7 days a week by calling, toll-free 1-800-327-4968, or for deaf and hearing impaired employees, TTY 1-877-492-7341, or by logging on to www.eap4you.com.

Keeping your cool

(Continued from page 13)

ees. It is unacceptable for a supervisor to intimidate carriers over leave and return times as a way of doing business.

In many cases there may be insufficient evidence to prove a violation of the Joint Statement on Violence and Behavior in the Workplace. There may, however, be enough to show management violated Section 115.4 of Handbook M-39, which establishes management's responsibility to maintain an atmosphere of mutual respect when interacting with employees. (See box 5 on page 13.)

Sometimes a supervisor may spark an ugly emotional response from a carrier for the most minor of reasons. Stresses in the member's personal life have carried over to the workplace and it doesn't take much to make the carrier

lose it. Whatever the cause of the stress, always remind members of the free benefit of receiving help through EAP.

Those seeking additional information can consult the following sites:

<http://helpguide.org>

<http://www.mayoclinic.com>

<http://www.medicinenet.com>

<http://www.webmd.com>

<http://www.nlm.nih.gov/medlineplus>

JARAP

(Continued from page 5)

To and from the letter carrier on the evaluation, proposed adjustment and Form 3999.

Emphasis on immediate use of the Issue Resolution Process when a dispute arises.

Local parties' ability to have an Alternate Route Evaluation and Adjustment Process approved by the national parties.

Ensuring adjustments take place within the agreed-to time frame.

Lessons learned

To a large extent, MIARAP reached its level of success because of the tireless dedication and hard work of those unsung letter carriers who worked on either a DEAT or a DLT through some difficulty and stress to ensure that the best possible route adjustments took place.

"With joint agreement and the ability to use the provisions to truly seek a representative time for the route and to consider carrier input as more than just empty words on the back of an 1840, we have con-

trol." *Laurie Miale, DLT, South Florida District*

"Carriers gained an understanding that their actions are directly related to the adjustment process. In the second phase of MIARAP, I have heard time and time again that the carriers are participating better as opposed to the first phase. This I believe is the result of the carriers better understanding their role in a joint process. From making certain their clock rings are correct to providing detailed comments at the consultations; the realization of their actions has become apparent.

"Additionally, I believe it was of great benefit for the NALC to get their "hands dirty" with COR so that we can question and clear-up some misapplications when management insists on using this program." *Troy Clark, ART, RAA Region 6*

"In JARAP, the NALC has tried to improve on MIARAP, but it can only be the success that its potential bodes if we all encourage and support the letter carriers

on these teams and provide accurate communication on evaluations and adjustments within the process prior to the adjustments taking place." *Dale Hart, Director of City Delivery*

Issue resolution process

The issue resolution process built into JARAP should serve as a catch-all for issues that either party believes are inconsistent with a fair and equitable adjustment. If teams discover there are issues related to the accuracy of route evaluation data or any other problems with the evaluation or potential adjustment of a route, the responsibility exists to elevate these concerns to the next step of the issue resolution process. Management cannot unilaterally implement adjustments until there is a joint resolution to the problem. (See chart to right.)

Carrier input is paramount in making fair adjustments

Union leaders need to familiarize themselves with the content of

Training Seminars & State Conventions

Listed below are the educational and training seminars planned for July—September 2010. For more information, contact your business agent. Regions not listed have no training scheduled in this time period.

Region 1—NBA Manny Peralta, (714) 750-2982
California, Hawaii, Nevada, Guam
Sept. 10-12 Labor 2010 Campaign School, Waikiki, HI
Sept. 26 Leadership Conference, Sacramento, CA

Region 2—NBA Paul Price, (363) 892-6545
Alaska, Utah, Idaho, Montana, Oregon, Washington
Sept. 19-23 WA Sate Shop Steward College, Gold Car, WA

Region 4—NBA Roger Bledsoe, (501) 760-6566
Arizona, Arkansas, Colorado, Oklahoma, Wyoming
Sept. 24-25 Regional 4 RAP Session, Phoenix, AZ

Region 7—NBA Chris Wittenburg, (612) 378-3035
Minnesota, North Dakota, South Dakota, Wisconsin
Sept. 18-19 SDSALC Training, Mitchell, SD

Region 13—NBA Timothy Dowdy (757) 934-1013
Delaware, Maryland, Virginia, West Virginia, Washington DC
Sept. 26 OWCP and NRP Training, Washington, DC

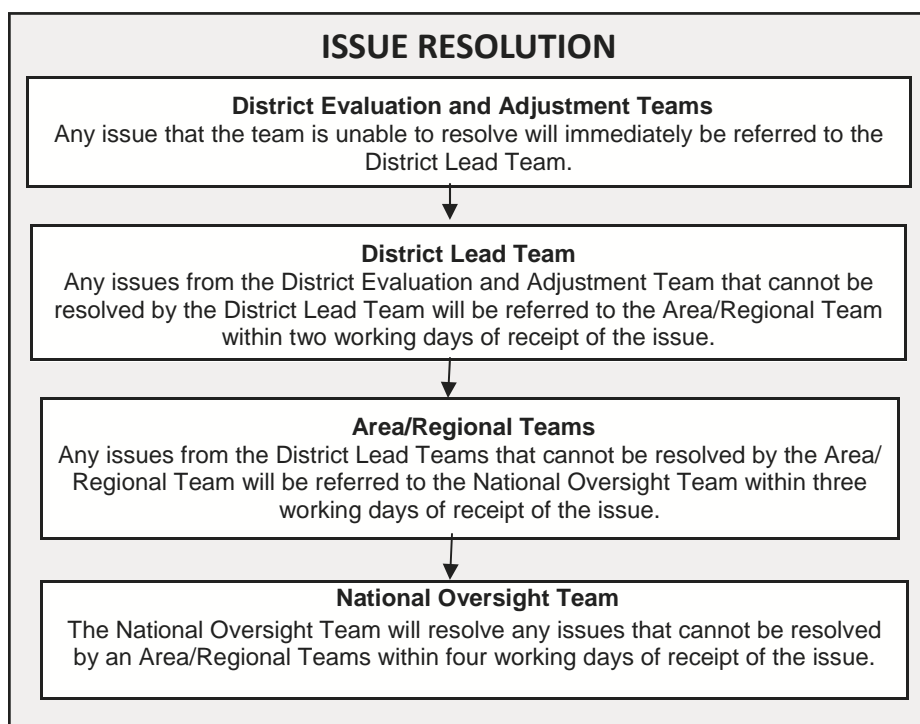
Region 15—NBA Larry Cirelli (212) 868-0284
Northern New Jersey, New York, SW Connecticut
Sept. 30 Region Presidents Meeting, New York, NY

the JARAP agreement and emphasize the important role letter carriers play in making JARAP a success. Letter carrier issues, concerns or complaints related to their route evaluation and proposed adjustment must be documented during the consultation process. The information provided by carriers is used by the District Evaluation and Adjustment Teams (DEAT) in the creation of adjustment scenarios.

Carrier Optimal Routing

COR may be used for route adjustments under JARAP. However, the DLT's will determine if a unit is prepared and the necessary resources are available to use COR in a particular unit. The USPS and the NALC have created a joint COR presentation (**M-01731**) that provides insight into the workings of COR and how to identify problems such as failure to include proper allied time credit when adjusting using COR.

Travel To, Travel From, and Travel Within times must be validated, documented, and discussed



during the carrier consultation. If there is a different credit of time proposed for travel within or travel to and from the route other than what existed as reflected by PS Form 3999, such new time will be validated and a decision made by the DEAT regarding the proposed change, prior to the second consul-

tation with the letter carrier. The DEAT should ensure that new times are validated on a representative day and time. The intent is for the letter carrier to be aware of any proposed time adjustments to the route's base street time and/or to the street time being transferred. ■



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U S P S

BY THE NUMBERS

Operations

<u>FY 2010-2nd Q</u>	<u>Number</u>	<u>Change from SPLY*</u>
Total mail volume year-to-date (Millions of pieces)	88,088	-6.3%
Mail volume by class (in millions)		
First-Class	41,217	-6.6%
Periodicals	3,735	-9.2%
Standard (bulk mail)	41,791	-5.8%
Packages	350	-12.7%
Shipping Services	750	2.5%
Other mail	246	-8.2%
Workhours (YTD in thousands)		
City Delivery	205,784	-4.8%
Mail Processing	117,182	-12.7%
Rural Delivery	87,353	-4.2%
Customer Service/Retail	82,367	-11.6%
Other	105,631	-5.9%

*SPLY=Same Period Last Year

Finances

<u>FY 2010-2nd Q (millions)</u>		
Operating Revenue	\$16,697	-1.4%
Operating Expenses	\$18,250	-3.1%
Operating Income	-\$1,553	

Employment

<u>FY 2010 —Pay Period 6</u>	<u>Number</u>	<u>Change from SPLY*</u>
City carrier employment	196,769	-4.4%
Full Time	175,614	-4.7%
PT Regular	857	-9.7%
PTF	20,298	-3.1%
Transitional	6,747	-0.2%
MOU Transitional	7,294	-3.0%

City carriers per delivery supervisor 18.1

Career USPS employment	594,574	-7.6%
Non-career employment	89,694	-7.8%