

# NATIONAL ASSOCIATION OF LETTER CARRIERS

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### Policing Article 12 Withholding

Article 12 gives management the right and responsibility to withhold full-time and part-time positions for employees who may be involuntarily reassigned. However, in many situations managers withhold more positions than are necessary or withhold positions for an excessive period of time. The Contract Administration Unit has prepared this paper to assist NALC branches in policing the withholding of letter carrier craft positions and successfully challenging any excessive or unnecessary withholding. The applicable contract provision, Article 12, Section 5.B.2, provides the following:

**12.5.B.2.** The Vice Presidents Area Operations shall give full consideration to withholding sufficient full-time and part-time flexible positions within the area for full-time and part-time flexible employees who may be involuntarily reassigned.

**Applying the JCAM:** The jointly agreed upon interpretations of the Article 12 withholding provisions are explained on pages 12-8 through 12-10 of the September 2001 edition of the *Joint Contract Administration Manual (JCAM)*. There are few, if any, disagreements concerning the interpretation of these provisions at the national level. Rather, most disputes concern the local misapplication of these provisions in specific situations. The jointly agreed upon language from the JCAM is highlighted in this publication to distinguish it from the NALC only explanatory material.

**Withholding** full and part-time vacancies under this provision is not merely a management right, it is an obligation in order to keep "dislocation and inconvenience" to full-time and part-time flexible employees to the minimum consistent with the needs of the service. National Arbitrator Gamser, wrote in NC-E-16340, December 7, 1979 (C-5904) as follows:

There is no question that [the] National Agreement imposed upon management **an obligation to anticipate dislocations which might occur and to withhold full-time vacancies** for the purpose of preserving as many opportunities for regular full-time employees to avoid the dislocation of moving out of the area by bidding into such full-time positions when they were forced out of their regular positions. Such a requirement was agreed to by the parties to several previous national negotiations, regardless of the craft or crafts represented on the union side of the bargaining table, because both labor and management recognized that full-time employees, in this instance, were members of a career work force, with tenure and stability of employment to be protected wherever possible, with rights which superseded those with a less protected career status regardless of craft. That is obviously why the provisions of the earlier Article XII and those of Appendix A, pertinent to this proceeding, as well as those of the present Article XII, did not impose a restriction upon the Area Postmaster General to withhold vacant full time positions only for the benefit and protection of employees who are members of the same craft as that in which the vacancy exists. (Emphasis added)

Thus, it is a violation of the National Agreement for management to fail to withhold positions under the provisions of Article 12, Section 5.B.2 when it can reasonably be anticipated that there will be a need to excess employees. If, for example, a letter carrier is excessed to another installation because management failed to withhold a position in the carrier's own installation even though the need for excessing could reasonably have been anticipated, a contract violation has occurred.

The JCAM and Gamser's award make clear that withholding is intended to benefit and protect employees. After all, the alternative to withholding and excessing could be for management to do what it has never done and exercise its limited rights to lay-off employees under the provisions of Article 6. When properly done for the right reasons, withholding is not a violation and should not be grieved. In the real world, however, withholding is often done improperly. In some cases managers have actually withheld all letter carrier craft positions in entire areas only to conclude after a lengthy period of time that almost no excessing was actually necessary.

Excessive withholding is not only a contract violation, it causes real harm and hardship to letter carriers. For example, National Arbitrator Mittenhal held in C-10343 that management may fall below the PTF/full-time staffing ratio in Article 7.3.A when properly withholding positions under the provisions of Article 12.5.B.2. Thus one of the effects of improper or excessive withholding is to delay the promotion of PTF employees to full-time regular status.

**Length of withholding:** There is no established contractual time limit on the length of time management may withhold positions. Rather, Arbitrator Gamser wrote in case NC-E-16340, December 7, 1979 (C-5904) that the parties must apply "a rule of reason based upon the facts and circumstances then existing." Whether management has been reasonable in a particular case depends on the full facts and circumstances. Gamser held that the Postal Service had not violated the National Agreement by withholding letter carrier positions for approximately one year.

**Number of withheld positions:** Management may not withhold more positions than are reasonably necessary to accommodate any planned excessing. Article 12, Section 5.B.2 only authorizes management to withhold "sufficient ... positions within the area for full-time and part-time flexible employees who may be involuntarily reassigned."

There are no blanket rules that can be used to determine whether management is withholding an excessive number of positions, or withholding positions for an excessive period of time. Rather, each situation must be examined separately based upon local fact circumstances. Generally, this involves calculating the number of positions that will be reduced, the length of time over which the reductions will occur and then determining whether the reductions will

occur faster than can be accommodated by normal attrition.

Withholding positions for excessing is only justified when positions in the losing craft or installation must be reduced faster than can be accomplished through normal attrition. Projections of anticipated attrition must take into account not only local historical attrition data, but also the age composition of the employees. Installations with a high percentage of employees approaching retirement age can reasonably anticipate higher attrition than installations with younger employees. Thus accurate projections require an examination of the local fact circumstances rather than the mere application of a national average attrition rate.

In order to determine whether withholding is necessary, the Union must determine whether management's projections of the number of employees who will be excessed is reasonable. The first step in making this determination is to have management identify the positions from which employees will be excessed and the date or schedule on which the excessing will occur. (See information requests, below).

The next step is to determine whether the positions identified in the losing craft must be reduced faster than can be accomplished through normal attrition, separation of casuals, or reduction in PTF hours. In order to make this determination, the Union should request the necessary information from management. (See information requests, below).

When the information is received, management's estimate of the number of employees who will be excessed should be checked. In doing so, particular attention should be paid to the length of time management proposes to withhold positions before the excessing will occur in order to determine whether the workforce reduction could, in fact, be accomplished through normal attrition. If the data shows that the amount of withholding is more than will reasonably be necessary to accommodate any needed excessing, a grievance should be filed.

Branches should seek advice and guidance from their national business agent's office whenever they need assistance in filing grievances or determining whether to file a grievance.

# Once management has determined that withholding is necessary, part-time flexibles should not be converted to full-time status within the area of withholding until management has withheld sufficient authorized positions.

**Part-time Flexible Conversions:** The Article 12 excessing provisions require management cease any conversion of part-time flexibles to full-time status within the withholding area until management has withheld sufficient positions to accommodate any planned excessing. For example, if management is withholding positions in an installation for the excessing of clerks, absolutely no PTF's clerks should be converted to full-time status as long as any letter carrier positions are being withheld.

In order to monitor compliance with this provision, branches should request in writing that they be notified of any conversions of PTF employees to full-time status in the losing craft within the installation or withholding area during the withholding period. See the section below on information requests for further guidance.

**Separating Casuals and Reducing PTF Hours:**

The impact of Article 12.5.C.5(a) should always be evaluated when examining whether withholding for excessing is warranted. This contract provision provides the following:

**12.5.C.5. Reduction in the Number of Employees in an Installation Other Than by Attrition**

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

(1) Shall determine by craft and occupational group the number of excess employees;

(2) Shall, to the extent possible, minimize the impact on regular work force employees by separation of all casuals;

(3) Shall, to the extent possible, minimize the impact on full-time positions by reducing part-time flexible hours;

If management can reduce or eliminate the need to withhold positions for excessing by planning instead to reduce PTF Hours or separate casuals, this provision requires it to do so. The JCAM explains manage-

ment's obligation to separate casuals under the provisions of Article 12.5.C.5.a (2) as follows:

In HOC-NA-C-12, July 27, 2001 (C-22368), National Arbitrator Snow held that the language of Article 12.5.C.5.a (2) allows the Employer discretion in separating casuals to the extent the discretion is exercised consistent with the following agreement among the parties: "All casuals must be removed if it will eliminate the impact on regular workforce employees. The Employer must eliminate all casual employees to the extent that it will minimize the impact on the regular workforce." See award at page 8.

In order to ensure that management has taken this requirement into account in calculating the need for excessing and withholding, branches should request information concerning casual and PTF numbers and workhours within the installation. See the section below on information requests for further guidance.

# Management may not withhold Carrier Technician positions in anticipation of excessing employees from another craft. Article 12, Sections 5.B.9, 5.C.5.a(4) and 5.C.5.b(2) require that when employees are excessed into another craft, they must meet the minimum qualifications for the position. The minimum qualification standards for Carrier Technician positions include one year of experience as a city carrier (See Qualification Standards for Carrier Technician—Level 6: 2310-02). Clerks can not meet the minimum experience requirements for Carrier Technician positions except when former letter carriers will be excessed back into the letter carrier craft.

**Withholding Carrier Technicians Positions:** Article 12.5.B.9 provides that:

Whenever in this Agreement provision is made for reassignments, it is understood that any full-time or part-time flexible employee reassigned must meet the qualification requirements of the position to which reassigned.

The JCAM citation above makes clear the national parties agreement that the restrictions in Article 12.5.B.9 must be strictly applied. Management may never withhold Carrier Technician positions for excessing from other crafts unless it can identify former letter carriers that will be excessed back into the letter carrier craft.

In the past, management has informed the union that it is withholding "all" letter carrier positions for excessing from another craft. In such cases the union should always seek immediate clarification concerning whether Carrier Technician positions are included in the withholding notice.

# Management may not withhold letter carrier positions in anticipation of excessing employees from lower level positions. The provisions of Article 12, Sections 5.C.5.a(4) and 5.C.5.b(2) specifically require that when excess employees are excessed to other crafts it must be to positions in the same or lower level.

**Excessing and Withholding by Grade:** The September 19, 1999 Fleischli arbitration award establishing the terms of the 1998 National Agreement upgraded all letter carrier craft positions effective November 18, 2000. As part of the upgrade, new terminology was established for letter carrier pay grades. Since the November 18, 2000 upgrade, former PS Grade 5 letter carriers have been classified as CC Grade 1 Letter Carriers and former T-6 Carrier Technicians have been classified as CC Grade 2 Carrier Technicians. The term "level" still used in Article 12 means the same as the current term "grade" used in other sections of the contract.

For the purpose of implementing the excessing and withholding provisions of Article 12, the national parties have agreed that PS-6 clerks are the "same level" as CC-1 letter carriers. Thus management may not withhold letter carrier positions for the excessing of Grade 5 employees from other crafts.

Whenever management informs NALC that letter carrier positions are being withheld for the excessing of employees from other crafts, one of the questions that should be asked in an information request is the pay grade of the employees who may be excessed. If any of the employees identified are Grade 5 or less, management has no authority to excess them into the carrier craft, so the withholding of letter carrier positions for those employees should be challenged.

# Full-time flexible assignments are incumbent only assignments and may not be withheld under the provisions of Article 12, Section 5.B.2 of the National Agreement (Prearbitration Settlement F90N-4F-C 93022407, July 18, 2000, M-01432).

**Full-time Flexible Assignments:** Conversions to full-time flexible are only made under the terms of the July 21, 1987 maximization memorandum and are in addition to any conversions or assignments required by the provisions of Article 7, Section 3. Full-time flexible assignments are "incumbent only" assignments that disappear when vacated for any reason. Thus they are not subject to withholding under the provisions of Article 12.5.B.2.

**Residual Vacancies Only:** Only residual vacancies may be withheld. For example, if a letter carrier retires, his/her former position may not be withheld immediately. Rather, it must first be treated like any other vacant duty assignment and placed for bidding under the provisions of Article 41. Only a residual vacancy after bidding is complete may be withheld.

**Information Requests:** Articles 17 and 31 give the Union the right to obtain all information necessary to process a grievance or determine whether to file a grievance. The Union should, as a minimum, request the following information when investigating the withholding of positions in the letter carrier craft.

! Management's reasons for asserting that the number of positions will have to be reduced. For example, a management plan to shut down a mail processing operation on a specified future date may well be more persuasive than a vague assertion that declining mail volume may lead to a 20% reduction in workhours.

- # Identification of the positions from which employees will be excessed— by job title, work location and pay grade.
- # The number of casuals and casual workhours in the installation.
- # The number of PTF employees and PTF workhours in the losing craft.
- # In many USPS Areas the Postal Service produces a "Site Impact Report" that contains much of the above information. Always determine if such a report has been prepared and, if so, request a copy.
- # The historical attrition data that management has used in determining that employees will have to be reduced faster than can be accomplished through normal attrition. The language of the contract itself does not discuss a requirement

that attrition be considered. However, in the JCAM at page 12-9, the national parties' have agreed that attrition must always be considered when determining the need for withholding.

- # Notification of any conversions of PTF employees to full-time status in the losing craft within the installation or withholding area during the withholding period.

Remember that this list is just the basic information that should always be requested when investigating withholding issues. Depending on local fact circumstances, it may be necessary to request additional information.

**Coordinating with the NBA office:** Some withholding situations are relatively straight-forward. If management proposes to withhold letter carrier positions in an installation for the excessing of employees from other crafts within the installation, the investigation and filing of any necessary grievances can ordinarily be handled by the branch with advice and assistance from their national business agent's office.

Unfortunately, many withholding cases are more complex. Often the Postal Service withholds positions over a wide geographic area for the excessing of employees and many NALC branches are involved. While the national business agent coordinates NALC's overall response in such cases, individual branches have a vital role. Only branches can file any necessary grievances. In addition to filing grievances and providing any information requested by the NBA, NALC branches should assist as follows:

- # Notify the national business agent immediately if any positions are withheld in your installation. The Postal Service is often derelict in providing information and in such cases the first time the NBA learns of the withholding may when notified by the branch.

- # Also notify the national business agent immediately if management informs you that positions that were previously withheld are no longer being withheld. Your national business agent will be keeping track of the total number of withheld positions, so this information will be extremely important.
- # Notify the national business agent if you are notified or become aware of any management plans to excess employees to or from your installation—either from the letter carrier craft or from other crafts.
- # When in doubt, provide the national business agent with any additional information you have that may help in formulating and coordinating NALC's response.

Remember, you are NALC's eyes and ears in such cases. Your cooperation with the national business agent's office will allow it to protect both your branch and other NALC branches in the region.

**Remedies for Violations:** An integral part of any grievance is the remedy request. The minimal elements of a proper remedy request in a withholding grievance are the following:

- # That the unauthorized withholding stop immediately and that management cease and desist from any future unauthorized withholding.
- # That any employees injured by the unauthorized withholding be made whole. Of course, the nature of the make whole remedy required will depend upon the exact fact circumstances. For example, It may include may include conversion of PTF's to regular, backpay or pay for working out-of-schedule.