

NATIONAL ASSOCIATION OF LETTER CARRIERS

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OVERTIME, STAFFING, AND SIMULTANEOUS SCHEDULING

The Contract Administration Unit has prepared this publication to help branch leaders monitor the Postal Service's responsibility to properly staff its facilities in order to meet its contractual obligations under Article 8 and the Employee and Labor Relations Manual.

The parties negotiated these contractual obligations over the years in order to protect employees from working mandatory overtime. In facilities that lack proper staffing, that employee protection is often sacrificed by supervisors as they manage the daily workload.

When staffing is insufficient, supervisors often resort to assigning overtime to full-time non-ODL employees and full-time ODL employees at the same time during a given workday. This is known as the "simultaneous scheduling" of overtime. As justification, USPS usually claims that an "operational window"—management's self-proclaimed deadline for the completion of all deliveries—requires the simultaneous scheduling.

Although proper staffing would prevent this from occurring, the Postal Service may claim that Article 3 gives it complete discretion when it comes to decisions on hiring. However, that is not the case at all. As the JCAM states under Article 3:

While postal management has the right to "manage" the Postal Service, it must act in accordance with applicable laws, regulations, contract provisions, arbitration awards, letters of agreement, and memoranda. Consequently, many of the management rights enumerated in Article 3 are limited by negotiated contract provisions. ...

Thus, management's Article 3 decisions on hiring and staffing are clearly limited by the negotiated Arti-

cle 8 provisions that protect employees from simultaneous scheduling of overtime. This conclusion is supported by a review of the pertinent contractual provisions and their negotiation history.

1. Background—Article 3

This article has remained virtually unchanged since the first negotiated National Agreement in 1971.

Article 3 Management Rights

Section 1. *The Employer shall have the exclusive right 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;

B. To hire, promote, transfer, assign, and retain employees in positions within the Postal

Service and to suspend, demote, discharge, or take other disciplinary action against such employees;

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;

E. To prescribe a uniform dress to be worn by letter carriers and other designated Employees; and

F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

2. Background—Article 8

Article 8 has gone through an enormous transformation since collective bargaining began in 1971. Before looking at those changes, it is necessary to examine the wording of overtime provisions as they existed prior to collective bargaining.

In 1968, prior to collective bargaining, the overtime provisions were located in Article 15. They stated in relevant part,

In emergencies or as the needs of the service require, employees may be required to perform overtime work or to work on holidays.... In administering overtime within a craft, a cardinal principle will be that overtime should be granted on the basis of need—when it is needed, where it is needed, how it is needed and the skills required. When scheduling overtime all qualified employees within the appropriate craft shall be given opportunities for overtime on an equitable basis. (March 9, 1968 – March 8, 1970 National Agreement).

In 1971, the overtime provisions were moved to Article 8 and were changed to read,

Section 5. Overtime Assignments. *Overtime work shall be required on the basis of need—when it is needed, where it is needed, how it is needed and the skills required and shall be scheduled on an equitable basis among qualified employees doing similar work in the work location where the employees regularly work.*

3. 1973—Negotiated Changes to Article 8

The parties negotiated many changes to Article 8 in 1973. One of those changes was the establishment of the Overtime Desired List (ODL). Another was the establishment of a maximum number of hours that a full-time employee could be required to work.

The creation of the ODL (Article 8.5.A) gave rise to the simultaneous scheduling definition provided earlier in this publication. The agreement went on to define the circumstance in which a non-ODL carrier could still be required to work overtime—if the ODL does not provide sufficient qualified people (Article 8.5.D). In addition, the agreement set a limit on the number of hours a full-time employee could work in a service day and the maximum number of days a full-

time employee could work in a service week (Article 8.5.F).

These changes were significant because they narrowed the circumstances in which the Postal Service could simultaneously schedule employees to work overtime. They also placed a responsibility upon the Postal Service to properly staff its facilities so that no full-time employee would be required to work more than 10 hours per day or 6 days per week.

Article 8 Hours of Work

Section 5. Overtime Assignments.

When needed, overtime work for regular full-time employees shall be scheduled among qualified employees doing similar work in the work location where the employees regularly work in accordance with the following:

A. Two weeks prior to the start of each calendar quarter, full-time regular employees desiring to work overtime during that quarter shall place their names on an “Overtime Desired” list.

B. Lists will be established by craft, section, or tour in accordance with Article XXX, Local Implementation.

C. 1. Except in the letter carrier craft, when during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected in order of their seniority on a rotating basis. Those absent, on leave or on light duty shall be passed over.

2. Only in the letter carrier craft, when during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected from the list. During the quarter every effort will be made to distribute equitably the opportunities for overtime among those on the list. In order to insure equitable opportunities for overtime, overtime hours worked and opportunities offered will be posted and updated quarterly. Recourse to the “Overtime Desired” list is not necessary in the case of a letter carrier working on his own route on one of his regularly scheduled days.

D. If the voluntary “Overtime Desired” list does not provide sufficient qualified people, qualified full-time regular employees not on the list may be required to work overtime on a rotating basis with the first opportunity assigned to the junior employee.

E. Exceptions to C and D above if requested by the employee may be approved by local management in exceptional cases based on equity (e.g., anniversaries, birthdays, illness, deaths).

F. Excluding December, only in an emergency situation will a full-time regular employee be required to work over 10 hours in a day or 6 days in a week.

Based on the language of the 1973 Agreement, there were certain circumstances under which the Postal Service could simultaneously schedule ODL and non-ODL full-time employees to work overtime. As an example, the Postal Service could assign an ODL employee to work overtime while also assigning overtime to a non-ODL carrier on his or her own route on regularly scheduled days (Article 8.5.C.2).

On the other hand, if the Postal Service chose to assign a non-ODL employee one hour of overtime on a route other than his or her own, and one hour of overtime to an ODL employee, the simultaneous scheduling would, under normal circumstances, violate Article 8.

Even with the newly negotiated language, which narrowed the circumstances in which the Postal Service could simultaneously schedule, USPS still retained the right, under Article 3.F,

...to take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

4. Background—ELM

ELM Issue 1, 4-1-78, Section 432.3

In this first issue of the ELM, the Postal Service reaffirmed the previously negotiated provisions of Article 8.5.F by limiting full-time bargaining unit employees to working no more than 10 hours per day

or 6 days a week. It also limited “all other employees” to working no more than 12 hours per day.¹

It is important to note that the maximum allowable hours provision was entered into freely by the Postal Service. By agreeing to this provision in 1973, the Postal Service bound itself to comply with its agreement from that point forward. The Postal Service still retained its one exception, which was for emergencies, under Article 3.F.

This contractual obligation has never been changed. Therefore, if the Postal Service is found to be requiring its employees to work beyond the maximum allowable hours in violation of Articles 3 and 8, staffing issues should be addressed.

5. 1984 Changes to Article 8

The next change to Article 8 occurred during negotiations for the 1984 National Agreement.² The new language, found in Article 8.5.F and G, further narrowed the circumstances in which simultaneous scheduling would be permissible. Article 8.5.F and G state,

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

G. Full-time employees not on the “Overtime Desired” list may be required to work overtime only if all available employees on the “Overtime Desired” list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week. Employees on the “Overtime Desired” list:

- 1. may be required to work up to twelve (12) hours in a day and sixty (60) hours in a service week (subject to payment of penalty overtime pay set forth in Section 4.D for contravention of Section 5.F); and*

¹ This provision excluded part-time employees from these restrictions. Part-time employees were later included in the provision limiting them to 12 hours in a service day in ELM Issue 6, 5-20-81.

² While part of the 1984 National Agreement was taken to interest arbitration, the Article 8 provisions were negotiated between the parties.

2. *excluding December, shall be limited to no more than twelve (12) hours of work in a day and no more than sixty (60) hours of work in a service week.*

However, the Employer is not required to utilize employees on the "Overtime Desired" list at the penalty overtime rate if qualified employees on the "Overtime Desired" list who are not yet entitled to penalty overtime are available for the overtime assignment.

The new language of 8.5.F required the Postal Service to sufficiently staff its facilities to ensure that no full-time regular employees are required to work overtime on more than 4 days of the employees' 5 scheduled days or over 8 hours on a non-scheduled day or over 6 days in a service week.

The new language in Article 8.5.G also increased the number of hours a full-time ODL employee could work in a service day without changing the maximum allowable hours for the service week. This is significant because employees on the ODL were now available to work up to 12 hours a day before management could require (with restrictions) a non-ODL carrier to work overtime.

The direction that the parties were heading in was clearly to reduce the amount of overtime that employees would be required to work and specifically, to protect non-ODL employees from working mandatory overtime. This was later affirmed in a Memorandum of Understanding which was negotiated by the Postal Service and the APWU in 1984. (See November, 2005 JCAM, p. 8-26) The memorandum stated that excessive use of overtime was inconsistent with the best interests of postal employees and the Postal Service.

Recognizing that excessive use of overtime is inconsistent with the best interests of postal employees and the Postal Service, it is the intent of the parties in adopting changes to Article 8 to limit overtime, to avoid excessive mandatory overtime, and to protect the interests of employees who do not wish to work overtime...

The memorandum also recognized the possibility that overtime would be necessary from time to time. Based on this, the parties agreed to additional restrictions regarding the assignment of overtime while continuing the use of Overtime Desired lists. The memorandum also gave an example in which the voluntary Overtime Desired list did not provide sufficient quali-

fied people, and qualified full-time regular non-ODL employees were required to work overtime simultaneously with ODL employees (See JCAM Article 8.5.D). This language, negotiated by the APWU without the NALC, was most certainly the result of time pressures within the clerk craft for "getting the mail out." The parties further agreed that the memorandum did not give rise to any contractual commitment beyond the provisions of Article 8.

The terms of the memorandum were later accepted by the NALC, but only after the Postal Service had agreed to include language which addressed the provisions of Article 8.5.C.2.d. The language in Article 8.5.C.2.d stated:

Recourse to the "Overtime Desired" list is not necessary in the case of a letter carrier working on the employee's own route on one of the employee's regularly scheduled days.

To address 8.5.C.2.d, NALC and USPS agreed to this language:

In the Letter Carrier Craft, where management determines that overtime or auxiliary assistance is needed on an employee's route on one of the employee's regularly scheduled days and the employee is not on the overtime desired list, the employer will seek to utilize auxiliary assistance, when available, rather than requiring the employee to work mandatory overtime.

This language became known as the "Letter Carrier Paragraph."

6. 1986 National Arbitration on Simultaneous Scheduling

The new overtime language of Article 8, Section 5.F and 5.G in the 1984 National Agreement became the focus of an interpretive dispute between the APWU and the Postal Service. NALC intervened in the case. (C-05860, April 11, 1986). APWU contended that ODL employees had the option of accepting or refusing overtime work when it exceeded the Article 8.5.F limits. If that contention had been correct, it would have meant that non-ODL employees could have been required to work overtime once ODL employees had been worked 8 hours on a non-scheduled day, 6 days in a service week, or overtime or 4 of 5 scheduled days in a service week (assuming that the ODL employees exercised their "option" not to work that overtime).

Neither the Postal Service nor NALC agreed with the APWU's contention. The case is therefore important because the award from National Arbitrator Mittenthal outlined the Postal Service's position on 5.F and 5.G limitations on simultaneous scheduling. Arbitrator Mittenthal put the issue in perspective in his award when he wrote about the background of the case:

This dispute is significant not just for those who have placed their names on the ODL. It also has a derivative impact on full-time regulars not on the ODL. For they can be required to work overtime only if all available and qualified employees on the ODL have reached the twelve-hour day and sixty-hour week limits. The APWU view of ODL employees' rights would make non-ODL employees more susceptible to an overtime draft while the Postal Service-NALC view would make non-ODL employees less susceptible to an overtime draft.

In national arbitration, management, together with the NALC, fought for the negotiated 5.F and 5.G employees' protections against mandated overtime. The parties' intent in the Article 8 negotiations is therefore very clear—to place limits on simultaneous scheduling. Even more important than the parties' intent is the fact that National Arbitrator Mittenthal agreed with the NALC and the Postal Service that those limits did, in fact, exist. Arbitrator Mittenthal's award specifically stated,

*My conclusion is that ODL employees do not have the option to accept or refuse overtime beyond the 5.F limitations. They can be required to perform such overtime. **The non-ODL employees may not be required to work overtime until the ODL employees have exhausted their overtime obligations under 5.G.** (Emphasis added.)*

Although this case originated in the APWU's claim that ODL employees had the option to refuse overtime that exceeded the 5.F limits, Arbitrator Mittenthal's ruling is just as applicable to other situations, too. Based on the above-cited language, management may assign non-ODL employees to work overtime off their assignments or on non-scheduled days *only after* it meets the 12- and 60-hour obligations under 8.5.G. The only exception would be in the event of actual emergencies as outlined in Article 3.F.

7. 1988 Memorandum of Understanding

The application of the Letter Carrier Paragraph caused some confusion and generated disagreement. In an attempt to clarify the overtime provisions, the parties subsequently entered into a Memorandum of Understanding on December 20, 1988 (M-00884), which stated that:

If a carrier is not on the Overtime Desired List (ODL) or has not signed up for the Work Assignment overtime, management must not assign overtime to that carrier without first fulfilling the obligation outlined in the "letter carrier paragraph" of the Article 8 Memorandum....

A notable change contained in the Memorandum was:

...the letter carrier paragraph does not require management to use a letter carrier on the ODL to provide auxiliary assistance if that letter carrier would be in penalty overtime status.

After the reaffirmation of the Letter Carrier Paragraph, and inclusion of the new language on providing auxiliary assistance, simultaneous scheduling and staffing responsibilities changed slightly. As an example, simultaneous scheduling would be permissible in the case of a non-ODL letter carrier working up to 10 hours on his or her own assignment on a regularly scheduled day as long as no ODL carrier was available to work at the regular overtime rate.

Simultaneous scheduling would also be permissible in cases where non-ODL carriers were working overtime on an assignment other than their own, or working a non-scheduled day, as long as all ODL carriers were working up to 12 hours in a service day.

While Article 3.F still allowed for simultaneous scheduling in emergencies, the staffing responsibilities remained the same. That is, management was obligated to ensure that ODL employees were not required to work more than the maximum of 12 and 60 hours and non-ODL employees did not work more than the Article 8.5.F limits, or in violation of Article 8.5.G.

8. 1991—National Arbitrator Mittenthal Settled a Dispute over the 1984 Memorandum

APWU then brought a national dispute challenging the circumstances under which the Postal Service could simultaneously schedule employees. Specifically, APWU asserted that the Postal Service could simultaneously schedule employees only under the conditions set forth in the 1984 Memorandum. The Postal Service disagreed and stated that the Memorandum was intended only to confirm that management was free to continue existing practices with respect to simultaneous scheduling as of December, 1984.

Arbitrator Mittenthal upheld the Postal Service's position. This ruling allowed simultaneous scheduling in facilities as it existed prior to 1984. For the letter carrier craft, in cases that would otherwise have been a contractual violation, this would only refer to emergency situations as per Article 3.F.

9. The Relationship Between Staffing and the Operational Window

As mentioned earlier, the term “operational window” has been loosely applied to mean a time of day which management has decided is the deadline for completion of all deliveries. Management has offered various reasons for such a deadline, including a “last” or “critical” dispatch, customer satisfaction, service goals, darkness, and numerous other circumstances and scenarios.

NALC has never accepted an operational window, nor any form of simultaneous scheduling, which requires non-ODL employees to work overtime unless all available employees on the ODL are worked in accordance with Article 8.5.G. Simply put, the Postal Service can implement operational windows, service goals, or any other program so long as its implementation does not violate the provisions of the National Agreement.

Therefore, management has an obligation to properly staff its facilities to remain in compliance with the National Agreement. For example, if the Postal Service, pursuant to Article 3, decided that all mail in a delivery unit should be delivered by 5:00 p.m., it is required to properly staff that unit to comply with the provisions of Article 8. Regulations specifically related to staffing are found in the EL-312, the Employment and Placement handbook:

EL 312 Section 124—The district manager of Human Resources is responsible for. . .

- c) *Planning and conducting appropriate ongoing recruitment efforts to meet local needs.*
- d) *Planning, opening, announcing, and publicizing examinations for recruitment to meet staffing needs of the district.*

EL 312 Section 211.1 Forecasting—The installation head is responsible for forecasting the recruitment requirements in the installation in sufficient time to assure that there are qualified persons available for appointment. . . While the installation head is responsible for forecasting recruitment needs, local management from all organizational functions must work together in assessing how changing operational needs will affect recruitment needs.

Therefore, if the Postal Service decides to make an operational change that requires all mail in a delivery unit to be delivered by 5:00 p.m., the regulations clearly state that management must staff accordingly. The EL 312 Section 211.1 bears repeating:

*While the installation head is responsible for forecasting recruitment needs, local management . . . must work together in assessing how **changing operational needs will affect recruitment needs.***
(Emphasis added)

This does not mean that circumstances may not arise from time to time that require the implementation of simultaneous scheduling that would otherwise violate Article 8. The NALC recognizes that such circumstances may exist consistent with the 1991 Mittenthal award and Article 3.F. As an example, a delivery unit properly staffed under normal circumstances may find that due to non-recurring, unforeseen circumstances, on a given day, there are insufficient employees on the ODL available to deliver the mail in the time needed.

However, it is under circumstances such as this that branch leaders should question the validity of the operational window and look at the circumstances in which the simultaneous scheduling occurred.

Is the window an unreasonable exercise of management's rights or a stratagem to avoid recourse to the ODL? Is the window based on a last dispatch that is regularly adhered to, or on a goal that management may or may not meet on a consistent basis? Has staffing usually been adequate to meet the window, or has it fallen below what is required to avoid simultaneous

scheduling? Is the simultaneous scheduling a first time occurrence, or a frequent one? When was the window implemented? Was it implemented with the proper staffing, and scheduling, to ensure compliance with the National Agreement?

The end result is that if a properly-staffed Postal Service is victim to some unforeseen circumstance that may require the use of simultaneous scheduling, the question of whether or not a violation of Article 8 has occurred must be determined on a case-by-case basis based on the validity of the window.

10. The Relationship Between Staffing Requirements and Maximum Allowable Hours

With increasing frequency across the United States, management is requiring letter carriers to work long hours often exceeding the National Agreement's limits. While local unions have successfully filed numerous grievances protesting these violations, and have often recovered monetary remedies, management has continued to commit these violations.

It is therefore essential that the union make the necessary arguments about staffing. Otherwise, the problem of working beyond the maximum allowable hours will persist. It is important to remember that, in the 1984 Memorandum, the parties agreed and recognized that,

Recognizing that excessive use of overtime is inconsistent with the best interests of postal employees and the Postal Service, it is the intent of the parties in adopting changes to Article 8 to limit overtime, to avoid excessive mandatory overtime, and to protect the interests of employees who do not wish to work overtime...³

Contract overtime limits include the following:

- Excluding December, full-time letter carriers on the ODL cannot be required to work over 12 hours in a service day or 60 hours in a service week.
- Excluding December, non-ODL full-time letter carriers cannot be required to work overtime on more than 4 of the employee's 5 scheduled days in a service week or over 10 hours on a regularly

scheduled day or over 8 hours on a non-scheduled day, or over 6 days in a service week.

- Part-time flexible employees cannot be required to work over 11 ½ hours in a service day.

If postal management is violating these maximum allowable hour provisions of the National Agreement, branch leaders should address the violations. Along with other appropriate remedies, NALC should request that the Postal Service staff its facilities sufficiently to ensure compliance with the National Agreement.

11. Conclusion

The history of negotiations concerning overtime language makes clear that NALC and USPS agreed explicitly about the importance of protecting employees from unwanted mandatory overtime work, as well as placing limits on overtime in general. With each successive change in the negotiated contract language, the parties narrowed further the circumstances in which management could simultaneously schedule a non-ODL employee to work overtime.

In the beginning, management had minimal limits on working carriers overtime. Through years of negotiations, the Postal Service freely entered into agreements that progressively limited the circumstances in which management was free to simultaneously schedule non-ODL employees to work overtime. Ultimately, those circumstances were narrowed to include only actual emergencies or situations in which management has met its obligations to fully maximize the ODL carriers.

While Article 8 language changed many times over the years, the language that remained consistent was Article 3. Article 3 outlines management's obligations to maintain the efficiency of operations and the integrity of Article 8 by properly staffing.

In cases of simultaneous scheduling and maximum allowable hours violations, it is important to fashion a remedy which addresses the cause of the violation. That cause is usually management's failure to staff a facility sufficiently to ensure compliance with the provisions of Article 8. A review of prior cases shows that, when these arguments are properly presented in arbitration, the union's position is upheld.

³ To date the parties have not negotiated a different position or intent.