

C 5860

ARBITRATION AWARD

April 11, 1986

UNITED STATES POSTAL SERVICE

-and-

AMERICAN POSTAL WORKERS UNION

Case Nos.  
H4C-NA-C-19  
H4N-NA-C-21 (1st issue)

-and-

NATIONAL ASSOCIATION OF LETTER CARRIERS

Subject: Overtime Assignments - Right of Full-Time Regulars  
On Overtime Desired List to Refuse Certain Over-  
time

Statement of the Issues: Whether full-time regulars  
on the overtime desired list have the option of ac-  
cepting or refusing work over eight hours on a non-  
scheduled day, work over six days in a service week,  
and overtime on more than four of five scheduled  
days in a service week? Or whether these employees  
may be required to perform such work, even against  
their wishes? Whether full-time regulars not on  
the overtime desired list may be required to work  
overtime where those on the list have not exhausted  
their overtime obligation of twelve hours a day or  
sixty hours a week?

Contract Provisions Involved: Article 8, Sections 4 and  
5 and the Article 8 Memorandum of the July 21, 1984  
National Agreement.

Appearances: For the Postal Service,  
J. K. Hellquist, General Manager, Labor Relations  
Division, Central Region; for APWU, Darryl J.  
Anderson, Attorney (O'Donnell Schwartz & Anderson);  
for NALC, Keith E. Secular (Cohen Weiss & Simon).

Statement of the Award: The grievances are re-  
solved in accordance with the foregoing discussion.

## BACKGROUND

This case involves the interpretation and application of new overtime language in the 1984 National Agreement, specifically, Article 8, Section 5F and G. The parties have certain basic differences as to the rights of full-time regulars on the overtime desired list (ODL). The APWU contends that these employees have the option of accepting or refusing work over eight hours on a non-scheduled day, work over six days in a service week, and overtime on more than four of five scheduled days in a service week. The Postal Service and NALC disagree. They maintain that full-time regulars on the ODL have no such option and that they must accept assigned overtime subject only to the twelve-hour day and sixty-hour week restrictions.

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.

Some history of the overtime clauses, Article 8, Sections 4 and 5, is necessary to a full understanding of the problem. Prior to the 1984 National Agreement, overtime was distributed in the following manner. ODLs were established "by craft, section, or tour...", whichever criterion was adopted by the local parties (Section 5B). Employees were free to sign (or not sign) the ODL. Thereafter, when overtime arose for the APWU unit, those on the ODL with the "necessary skills" were "selected in order of their seniority on a rotating basis" (Section 5C1a). When overtime arose for the NALC unit, those on the ODL list with the "necessary skills" were "selected" with Management being required to make "every effort...to distribute [such overtime] equitably among those on the list" (Section 5C2a and b).<sup>1</sup> There was just one overtime pay rate, namely, one and one-half times the straight

<sup>1</sup> However, recourse to the ODL was 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" (Section 5C2d).

time rate (Section 4A). Such overtime pay was due for any work over "eight (8) hours...in any one service day" or over "forty (40) hours in any one service week" (Section 4B).

There were other important contract provisions as well. If the ODL did not produce sufficient qualified people, then employees "not on the list may be required to work overtime on a rotating basis with the first opportunity assigned to the junior employee" (Section 5D). Limits were placed on the amount of overtime a full-time regular could be required to work, regardless of whether or not he was on the ODL. Specifically, "no full-time regular...[was] required to work overtime on more than five (5) consecutive days in a week... [or] over ten (10) hours in a day or six (6) days in a week" (Section 5F). These restrictions, however, did not apply in the month of "December" or in "emergency situations" (Section 5F).

There was one national level arbitration with respect to the meaning of 5F. The grievant, an APWU clerk, was a full-time regular on the ODL. He reported two hours early on a scheduled day and completed ten hours' work by the end of his shift. Additional overtime was then necessary. The grievant asked to work such overtime but was refused. Management instead gave the overtime to employees who were not on the ODL but who had only worked eight hours that day. The Postal Service argued that the ten-hour limitation in 5F was both "a protection [for the grievant] against a mandatory assignment and a bar to any further overtime that day." The APWU conceded that Management could not require him to work beyond ten hours. But it urged that he was free to volunteer for the additional overtime and that, having done so, he had a superior right to the overtime because he was on the ODL.

Arbitrator Bloch upheld the APWU's position in a May 1983 award, Case No. H1C-4B-C-2129.<sup>2</sup> His ruling was that ODL employees could not be forced to work beyond the 5F limitations but could volunteer to do so. He reasoned that once the grievant volunteered, he had to be chosen for the overtime in preference to non-ODL people even though this overtime would have entailed his working more than ten hours. The arbitrator did not consider the reference to a ten-hour day in 5F as an absolute ceiling on ODL employees' daily hours.

<sup>2</sup> It should be noted that NALC did not intervene in this case and that Arbitrator Bloch was not a member of the national arbitration panel which had jurisdiction over disputes between NALC and the Postal Service.

Thereafter, I presume, APWU employees on the ODL had the option of accepting or refusing overtime beyond the 5F limitations. That seems to be borne out by a Step 4 pre-arbitration settlement in April 1984. There, the Postal Service and APWU agreed that a full-time regular on the ODL "shall not be required to involuntarily work over 10 hours in a day, more than 6 days in a week, or work overtime on more than 5 consecutive days in a week." They agreed further that anyone selected for overtime pursuant to the overtime distribution rules "may volunteer to work..." beyond these restrictions and that Management would not violate Article 8 by granting the volunteer's request.

At about this same time, April 1984, the parties began negotiations for a new National Agreement. The Unions sought to create new restrictions on overtime including a requirement for advance notice and an increase in the overtime premium. Their objective, as in the past, was to limit overtime and to protect those who did not wish to work overtime. No real progress appears to have been made until November. The parties then reached agreement on penalty pay, two times the straight time rate, for overtime work beyond certain restrictions. They had trouble defining those restrictions, that is, describing the point at which penalty pay would begin. This difficulty was resolved on November 21 after a series of meetings. It was agreed that penalty pay would be applied to work over ten hours on a scheduled day, over eight hours on a non-scheduled day, over six days in a service week, and overtime on more than four of five scheduled days in a service week.

Notwithstanding this agreement, discussion of overtime issues continued. Postmaster General Bolger and APWU President Biller met on November 26 to deal with some disagreement which had recently surfaced. Bolger gave Biller a Postal Service proposal as to the wording of Article 8 and sent a copy to NALC President Sombrotto. That proposal included the following clause, Section 4G:

"Nothing in this Article shall require the assignment of overtime to an employee, if such assignment shall result in the payment of penalty overtime pay, when there is another employee available for such overtime assignment who is not eligible for penalty overtime pay."

This language would have permitted Management to assign overtime to someone not on the ODL in order to avoid penalty pay to people on the ODL who were available for such overtime. Both the APWU and NALC found this arrangement unacceptable.

Discussions continued, Bolger and Biller meeting again on November 27. Biller suggested a clause which would have eliminated Section 4G above and would have added the following sentence to what had already been tentatively agreed upon:

"...Excluding December, employees volunteering for overtime 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..."

This was the first reference in the negotiations to these twelve-hour and sixty-hour ceilings. And, at least according to NALC, it was the first reference in the negotiations to employees "volunteering" for overtime as contrasted to employees signing the ODL. Earlier Postal Service suggestions as to "mandatory" overtime had been vigorously opposed by the APWU.

Another meeting, attended by Bolger, Biller and Sombrotto, took place on December 3. Bolger proposed a draft of how the Postal Service thought Article 8 should read. His proposal deleted the Section 4G language he had submitted on November 26 and added to Section 5F the sentence ("Employees volunteering for overtime...") Biller had submitted on November 27. Sombrotto objected to the latter sentence and urged it be replaced by a reference to persons on the ODL. His position was that those on the ODL be required to work overtime before anyone else was asked. After much discussion, it was apparently agreed that use of the ODL would be substituted for the language with respect to "employees volunteering..." The parties then instructed their attorneys to prepare contract language based on the understandings reached at this meeting.

The attorneys sought to comply with their instructions. They prepared a draft of Article 8, Section 5G, perhaps 5F as well. Both the Postal Service and NALC were satisfied that this draft accurately reflected the parties' agreement at the December 3 meeting. The APWU, however, disagreed and found the draft unacceptable. It went back to the Postal Service and sought further language changes. The Postal Service stood by the draft and refused to alter what it believed had already been agreed upon. This impasse between the Postal Service and APWU continued until sometime after the interest arbitration hearings had begun in December. Their differences were resolved through a series of meetings between December 10 and 17 which culminated in the execution of an Article 8 Memorandum. That Memorandum attempted to explain the "underlying principles" behind Article 8 but did not change any

Article 8 language. NALC did not participate in any of these negotiations and did not sign the Memorandum. Nevertheless, the Article 8 Memorandum was made part of the 1984 National Agreement.

The relevant terms of Article 8 and the Memorandum presently read:

#### Section 4. Overtime Work

"C. Penalty overtime pay is to be paid at the rate of two (2) times the base hourly straight time rate. Penalty overtime pay will not be paid for any hours worked in the month of December.

"D. Effective January 19, 1985, penalty overtime pay will be paid to full-time regular employees for any overtime work in contravention of the restrictions in Section 5.F."<sup>3</sup>

#### Section 5. Overtime Assignments

"F. Effective January 19, 1985, 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. Effective January 19, 1985, full-time employees not on the 'Overtime Desired' list [ODL] 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

<sup>3</sup> The provisions of Section 4A, B, and F remained the same as they had been in the 1981 National Agreement.

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."<sup>4</sup>

#### Article 8 Memorandum

"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, while recognizing that bona fide operational requirements do exist that necessitate the use of overtime from time to time. The parties have agreed to certain additional restrictions on overtime work, while agreeing to continue the use of overtime desired lists to protect the interests of those employees who do not want to work overtime, and the interests of those who seek to work limited overtime. The parties agree this memorandum does not give rise to any contractual commitment beyond the provisions of Article 8, but is intended to set forth the underlying principles which brought the parties to agreement.

"The new provisions of Article 8 contain different restrictions than the old language. However, the new language is not intended to change existing practices relating to use of employees not on the overtime desired list when there are insufficient employees on the list available to meet the overtime needs. For example, if there are five available employees on the overtime desired list and five not on it, and if 10 workhours are needed to get the mail out within the next hour, all ten employees may be required to work overtime. But if there are 2 hours within which to get the mail out, then only the five on the overtime desired list may be required to work.

<sup>4</sup> The provisions of Section 5A, B, C, D and E remained the same as they had been in the 1981 National Agreement.

"The parties agree that Article 8, Section 5.G.1., does not permit the employer to require employees on the overtime desired list to work overtime on more than 4 of the employee's 5 scheduled days in a service week, over 8 hours on a nonscheduled day, or over 6 days in a service week.

"Normally, employees on the overtime desired list who don't want to work more than 10 hours a day or 56 hours a week shall not be required to do so as long as employees who do want to work more than 10 hours a day or 56 hours a week are available to do the needed work without exceeding the 12-hour and 60-hour limitations.

\* \* \* \*

"The penalty overtime provisions of Article 8.4 are not intended to encourage or result in the use of any overtime in excess of the restrictions contained in Article 8.5.F."<sup>5</sup>

The parties discussed the meaning of these provisions in early April 1985. The Postal Service formally explained its position to the Unions in an April 5 letter. NALC disagreed and filed a grievance (H4N-NA-C-21, 1st issue) at the national level on July 2. APWU also disagreed and filed a grievance (H4C-NA-C-19) at the national level on July 3. Then each Union intervened in the other's grievance.

Arbitration hearings in this case were held in Washington, D.C. on December 18 and 19, 1985. Post-hearing briefs were submitted by all parties on February 7, 1986; reply briefs were submitted by the Postal Service and APWU on February 28.

#### DISCUSSION AND FINDINGS

One of the issues that prompted this arbitration appears to have been resolved. The Postal Service initially took the position that it could assign overtime to non-ODL employees to avoid incurring penalty pay to ODL employees for overtime work beyond the 5F limitations. Both APWU and NALC protested this view. And the Postal Service, by agreeing with NALC's construction of the contract language in question, has obviously changed its position on this matter. It is

<sup>5</sup> This Memorandum was incorporated in the National Agreement through the December 24, 1985 Kerr interest arbitration award.

clear from the statements at the arbitration hearing and in the briefs that the Postal Service may not assign overtime to non-ODL employees to avoid incurring penalty pay to ODL employees.

The crucial issue here is whether ODL employees have the option of accepting or refusing overtime work beyond the 5F limitations. This problem is largely attributable to an apparent conflict between Section 5F and 5G of Article 8. The former provision concerns "full-time regular[s]..." which plainly encompasses ODL employees. It says such employees "will [not] be required to work overtime..." in the following situations: more than ten hours on a scheduled day, more than eight hours on a non-scheduled day, more than six days in a service week, and more than four of five scheduled days in a service week.<sup>6</sup> The latter provision says ODL employees "may be required to work up to twelve...hours in a day and sixty...hours in a service week..."

The APWU concedes that the ten-hour limitation in 5F has been superceded by the twelve-hour limitation in 5G. But it insists that in all other respects the 5F limitations remain in effect, thus providing ODL employees with the option of accepting or refusing overtime beyond these limitations. It believes the 5F "will [not] be required..." language leaves room for employees to volunteer to do what they cannot be required to do. Its position is, accordingly, that ODL employees can work more than eight hours on a non-scheduled day, more than six days in a service week, and overtime on more than four of five scheduled days in a week only if they volunteer for such work. Absent such consent, it says, Management must look elsewhere to find someone to handle the overtime. It considers 5G to be simply a ceiling on the number of overtime hours an employee may volunteer to work. It maintains its view is supported by overtime administration under the prior National Agreement (particularly the Bloch award and the Step 4 settlement cited earlier) and the language of Article 8 and the Article 8 Memorandum.

The Postal Service and NALC contend that the prohibition in 5F, at least with respect to ODL employees, has been cancelled by the permissive language in 5G. They argue that ODL employees can be required to work up to twelve hours in a day and sixty hours in a week without regard to the 5F limitations. They urge that these employees do not have the

<sup>6</sup> This last situation refers to the employee who works overtime on four scheduled days and is then asked to work overtime on his fifth scheduled day as well.

option of accepting or refusing any overtime beyond the 5F limitations. They claim their view is supported by the clear and unambiguous language of Article 8, by the history of the 1984 negotiations, and by considerations of practicality.

A hypothetical example may be useful in bringing these arguments into sharper focus. Assume "X", a full-time regular, is on the ODL and has worked the following hours on his regularly scheduled days in a given week:

S	S	M	T	W	Th	F
		12	10	10	10	8

Assume further that two hours of overtime are needed at the end of his eight-hour shift on Friday and that only "X" and "Y", a non-ODL employee, are available for such overtime. Neither the twelve-hour daily nor sixty-hour weekly restrictions are relevant in this example.

The APWU emphasizes that these extra two hours on Friday for "X" would be "overtime on more than four...of [his]... five...scheduled days in a service week." It asserts that 5F says he "will [not] be required to work overtime..." in such circumstances. It believes he therefore has the option of accepting or refusing this overtime. It claims that if he volunteers he has a right to the extra two hours ahead of "Y" or anyone else not on the ODL but that if he declines he cannot be compelled to work the overtime. It notes that only after he declines may Management assign "Y" to the overtime.

The Postal Service and NALC rely on the terms of 5G in alleging that "X" has no such option. They state that so long as "X" has not worked twelve hours on Friday or sixty hours in the week, he can be required to work the additional overtime on Friday. Indeed, they urge that "X" must be required to work this overtime in order to protect "Y" from an overtime draft.

For the following reasons, the Postal Service-NALC interpretation of Article 8 is far more persuasive.

Compare, to begin with, the terms of 5F ("will [not] be required...") and 5G ("may be required..."). The APWU says the former words mean that an ODL employee cannot be compelled to work beyond the 5F limitations. Assuming that is so, then the latter words must necessarily mean that an ODL employee

can be compelled to work up to twelve hours in a day. The employee's 5F right to resist certain overtime is subordinated to Management's broader 5G right to demand such overtime.

The point can be made more forcefully through a close examination of the language of 5G: "...Employees on the 'Overtime Desired' list...1. may be required to work up to twelve ...hours in a day and sixty...hours in a service week..." Section 5G1 thus allows Management to insist upon a twelve-hour "day" for ODL people. It ignores the distinction made in 5F between "regularly scheduled day" and "non-scheduled day." The parties' choice of the broadest possible word, "day", must have been intentional. They appear to have meant any "day", whether scheduled or not. The APWU admits that the 5F limitation of "ten...hours on a regularly scheduled day" has been overridden by the twelve-hour day in 5G1.<sup>7</sup> By the same token, it seems to me, the 5F limitation of "eight...hours on a non-scheduled day" or "overtime on more than four ...of the...five...scheduled days in a service week" are also overridden by the twelve-hour day in 5G1. And Management being thus free to require twelve hours on a non-scheduled day, it would appear that the 5F limitation of "six...days in a service week" is likewise overridden. In other words, 5G1 is a far-reaching exception to all the limitations stated in 5F, not just to the ten-hour rule.

Equally important is the recognition in 5G1 that Management, in requiring ODL employees to work up to twelve hours a day or sixty hours a week, is "subject to payment of penalty overtime pay set forth in Section 4.D for contravention of Section 5.F..." The underscored words reveal the parties anticipated that Management may find it necessary to "contraven[e]" the 5F limitations, that ODL employees "may be required to work..." overtime beyond those limitations. Nothing in this language suggests that the parties' concern was "contravention" of only one such limitation, the ten-hour rule. Their concern was much larger. They were dealing with any "contravention" of the 5F limitations. That is obvious also from the terms of 4D which call for "penalty overtime pay" for "any overtime work in contravention of the restrictions in Section 5.F." The reference is to any and all limitations found in 5F. The quoted language in 5G1 has the same broad reach. That being so, it would appear that the twelve-hour

<sup>7</sup> This admission undermines the APWU contention that 5G is little more than a statement of overtime ceilings (twelve and sixty) beyond which ODL employees cannot be required to work.

and sixty-hour language in 5G1 were meant to pertain to any and all limitations found in 5F.

Moreover, the Postal Service-NALC interpretation realistically integrates the overtime duty of ODL employees with the overtime draft of non-ODL employees. Section 5G1 says ODL people "may be required to work up to twelve...hours in a day and sixty...hours in a service week"; the first sentence of 5G says non-ODL people "may be required to work overtime only if all available...[ODL employees] have worked up to twelve...hours in a day or sixty...hours in a service week." In short, non-ODL employees can be drafted for overtime at precisely the point at which ODL employees have exhausted their overtime obligation. Such symmetry assures the availability of someone to work the needed overtime. To qualify the ODL employees' obligation by allowing them the option to accept or refuse overtime beyond the 5F limitations would mean they could refuse overtime before they reached the twelve-hour and sixty-hour ceilings. That would mean in turn that non-ODL employees could refuse overtime because the ODL people had not reached these ceilings. The result in many situations would inevitably be that no one could be ordered to perform the necessary overtime and postal operations would suffer. That could hardly have been what the parties intended.

Consider, in this connection, the impact of the APWU interpretation in the hypothetical example mentioned earlier. The APWU would permit "X" to decline the additional two hours of Friday overtime. That would be his option because the work in question went beyond the 5F limitations. Because "X" had not yet reached the twelve-hour ceiling on Friday or the sixty-hour ceiling for the week, a non-ODL employee such as "Y" could also decline the overtime pursuant to 5G.8 If both "X" and "Y" refused, the extra two hours of overtime would not be performed at all. It is difficult to believe the parties meant 5F and 5G to be read in such a way as to produce such a patently unreasonable result.<sup>9</sup>

<sup>8</sup> To the extent to which the APWU believes the overtime would have had to be worked by "Y" in the hypothetical example, its position would conflict with the plain meaning of the first sentence in 5G.

<sup>9</sup> Note that the very first sentence in Section 5 provides: "When needed, overtime work for regular full-time employees shall be scheduled among qualified employees..." The APWU position would, in certain situations, deny Management this right to "schedule...needed...overtime..."

The Postal Service-NALC interpretation is further supported by the final sentence in 5G:

"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."

This sentence says in effect that Management may pick and choose among ODL employees to avoid penalty overtime pay, to avoid working some of these employees beyond the 5F limitations. But the clear implication of these words is that Management "is...required" to use ODL employees for the overtime when all ODL employees have reached the point at which their next overtime assignment will bring penalty pay. Given this requirement, the ODL employees can hardly be said to have the option of accepting or refusing the overtime.<sup>10</sup>

Furthermore, the APWU argument contemplates ODL employees being given an opportunity to volunteer for overtime beyond the 5F limitations. This would entail ascertaining the wishes of ODL employees on a day-to-day basis depending on the need for overtime and each employee's accumulated overtime hours in a given day or week. Article 8 says absolutely nothing about any such procedures. President Biller himself acknowledged in his testimony that the Article 8 language drafted by the parties' attorneys on December 3, 1984, did not permit ODL employees "the option to volunteer..." for work beyond the 5F limitations. Yet that draft language is exactly what now appears in 5F and 5G of the present National Agreement.

The APWU returned to the bargaining table with the Postal Service after December 3 because it believed the 5F and 5G language drafted by the attorneys did not really embrace the APWU view of ODL employees' rights. The result of these talks was the Article 8 Memorandum. The APWU asserts that the terms of the Memorandum, primarily the third paragraph, support its position in this case:

<sup>10</sup> The further implication is that Management "is...required" to use ODL employees in preference to non-ODL employees even though the latter, if assigned to the overtime, would not receive penalty pay.

"The parties agree that Article 8, Section 5.G.1, does not permit the employer to require employees on the ...[ODL] to work overtime on more than 4 of the employee's 5 scheduled days in a service week, over 8 hours on a non-scheduled day, or over 6 days in a service week."

These words seem to be directed at the matter in dispute, the interrelationship between 5F and 5G1. They state that 5G1 does not permit Management to require ODL employees to work overtime beyond the 5F limitations, except of course for the ten-hour limit on a regularly scheduled day. This is the very principle upon which the APWU rests its case. The difficulty with this claim, however, is that the parties agreed that the Memorandum "does not give rise to any contractual commitment beyond the provisions of Article 8..." I have already held that there is no "contractual commitment" in Article 8 to allow ODL employees the option of accepting or refusing overtime beyond the 5F limitations. It follows that nothing in the Memorandum can create such a "contractual commitment", such an ODL employee right. To rule otherwise would be to permit the Memorandum alone to establish contract rights not otherwise provided for in Article 8. Such a result is expressly forbidden by the Memorandum.

Nevertheless, to the extent to which there is ambiguity in Article 8, the APWU argues that it may use the Memorandum as an interpretive aid to clarify what the parties intended in 5F and 5G. For the purpose of the Memorandum was, by its own terms, to "set forth the underlying principles which brought the parties to agreement..."<sup>11</sup> This argument is not without appeal. But the fact is that when the overtime issues were settled at the December 3, 1984 negotiating session, there was no agreement that ODL employees could be required to work overtime beyond the 5F limitations only if they volunteered to do so. Nor did the 5F and 5G language drafted by the parties' attorneys provide for such volunteering, for an option to accept or refuse this kind of overtime. It was this contractual silence, the absence of any language embracing the volunteer or option concept, which prompted the APWU dissatisfaction with the attorneys' draft. The APWU insisted

<sup>11</sup> I believe the words "brought the parties to agreement" refer to the agreement on Article 8, not the agreement on the Memorandum.

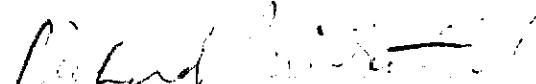
then on further negotiation with the Postal Service on this Article 8 question. Its action recognized in effect that 5F and 5G did not support the position it now takes. It could not secure a change in the Article 8 language and settled instead for the Memorandum. To allow the Memorandum to add to 5F and 5G what the parties clearly did not intend when they reached agreement on December 3 would, I believe, add a new "commitment" to Article 8. Once again, that is exactly what the Memorandum is not supposed to do.

As for the Bloch award and the Step 4 grievance settlement, both of these events occurred under a prior National Agreement. The new language added to the 1984 National Agreement, particularly 4D and 5G, make these precedents of little value in this case.

My conclusion is that ODL employees do not have the option to accept or refuse overtime beyond the 5F limitations.<sup>12</sup> They can be required to perform such overtime.<sup>13</sup> The non-ODL employees may not be required to work overtime until the ODL employees have exhausted their overtime obligation under 5G.

#### AWARD

The grievances are resolved in accordance with the foregoing discussion.



Richard Mittenthal, Arbitrator

12 The evidence and arguments before me plainly show that this is, contrary to the APWU claim, a principal issue in the present case.

13 There is no need to determine the precise circumstances under which Management may require ODL employees to work overtime beyond the 5F limitations. That subject is covered in part by paragraphs 2, 4 and 6 of the Memorandum. According to paragraph 4, ODL employees who do not wish to work more than ten hours "normally...shall not be required to do so" provided other ODL employees are willing to work beyond ten hours. According to paragraph 6, those who place their names on the ODL are given the opportunity at such time to indicate their availability to work beyond ten hours in a day.