

American Postal Workers Union, AFL-CIO

William Burrus, President

# CBR



Greg Bell, Director  
Industrial Relations

COLLECTIVE BARGAINING REPORT

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SPECIAL ISSUE

## Voluntary Transfers



**An Overview of Issues Associated with Requests for  
Voluntary Transfers To Another Postal Installation**

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## Collective Bargaining Report

The CBR is published by the Industrial Relations Department of the APWU:

Inquiries can be addressed to:

Greg Bell, Industrial Relations Director  
American Postal Workers Union  
1300 L Street, N.W.  
Washington, D.C. 20005

Arbitration awards may be obtained from APWU Search, your National Business Agent or Regional Coordinator, or the Industrial Relations Department at (202) 842-4273. Please note that awards issued recently may not yet be on APWU Search. To expedite obtaining the awards, please designate the CBR issue number and AIRS number of the case(s) you are requesting.

## INTRODUCTION

How do I go about transferring to another postal installation? Are there specific guidelines the Postal Service has to follow in reaching its decision on a transfer? If I'm not granted a transfer, what options do I have?

These are only a few of the many questions that are frequently asked by individuals seeking transfers to other postal installations.

Article 12.6 of the National Agreement, and the Memorandum of Understanding Re: Transfers (**See page 315 of the 2006-2010 National Agreement**), as well as many arbitration awards on the subject of transfers address these concerns. (**See page 36 of this CBR for a copy of Article 12.6, and pages 37-40 for a copy of the Transfer Memo.**)

In addition, Section 351.6 of the Employee and Labor Relations Manual, as well as Articles 37.2.D.7, 38.3.I and 39.1.B.12 address mutual exchanges or trades of career employees. (**See page 41 of this CBR for a copy of ELM 351.6, and pages 42-44 for a copy of the craft articles concerning mutual exchanges.**)

For employees who are impacted by excessing, an additional MOU regarding "Transfer Opportunities to Minimize Excessing" that was recently negotiated sets out specific rules that apply in those circumstances. (**See page 381 of the 2006-2010 National Agreement, and**

**pages 45-48 of this CBR for a copy of the MOU re: Transfer Opportunities to Minimize Excessing.**)

Locals can best help individual employees by clarifying procedural issues associated with voluntary transfers as well as formal obligations required of the Postal Service under both Transfer Memos and Article 12. They also can ensure that the Service is complying with terms of the original Transfer Memo by requesting specific information on transfer numbers and grieving the denial of transfers if the Service has acted unreasonably. In the case of transfers desired in the event of excessing, locals can ensure that the Postal Service is giving priority consideration to these transfers. When such transfers are denied or delayed, local unions can make sure such disputes are forwarded to the appropriate APWU Regional Coordinator.

Arbitration awards that are cited in this article include both APWU and NALC cases, since the original Transfer Memo is contained in both contracts. All awards contain an AIRS number and are on SEARCH; however, copies can also be obtained by contacting the Industrial Relations Department.

Greg Bell, Director  
Industrial Relations

## HISTORY OF TRANSFER MEMORANDUM

Employees request transfers for a variety of reasons. Some simply desire to work in another area of the country. Often a transfer is critical to keeping families together. An employee may need a transfer for personal or health reasons; a spouse may have been transferred to a different job in another city or an ailing family member can only receive treatment or care at a particular health facility. Depriving a postal employee of a transfer in these situations can result in the separation of family members and an untold amount of expense and strain on the employee.

In response to arbitrary and exclusionary policies, the Postal Service issued its first “guidelines” for managerial

consideration of transfer requests on April 6, 1979 (Bolger Memorandum). In 1984, this memo was incorporated into the National Agreement and then starting with negotiations for the 1987 Agreement, the memo was further strengthened. During negotiations for the 2006-2010 Agreement, the parties entered into an additional Transfer MOU that is applicable to employees who have been impacted by excessing. (See page 7 of this CBR under “New Transfer Rules for Excessed Employees.”) **Note, however, that the MOU re: Transfer Opportunities to Minimize Excessing has different rules than those set out in the longstanding Transfer MOU.**

## THE TRANSFER RULES

### Evaluation Standards

Under terms of the Transfer Memo, “full consideration” must be given to all reassignment requests with both gaining and losing installation heads being “fair in their evaluations.” Significantly, also, the memo prescribes that requests from qualified employees shall not be “unreasonably denied” and it sets forth standards for judging transfer applicants’ records.

Transferees merely must meet “minimum qualifications” for positions to which they seek reassignment and have “acceptable work, safety, and attendance record[s].” Moreover, supervisory evaluations must be “valid” and “to the

point,” with “unsatisfactory work records accurately documented.”

### Reassignment Ratios

In addition to prescribing specific evaluation criteria for selecting transferees, the memo sets up a ratio that must be achieved in filling vacancies when there are qualified applicants for reassignment. This threshold requirement must be met “except in the most unusual of circumstances.”

The Postal Service must fill at least “one out of every four vacancies” from transfer requests in the case of all offices of 100 or more man-years “if sufficient requests from qualified applicants have

been received.” In the case of offices of less than 100 man-years, a cumulative ratio of one out of six vacancies is required to be filled from transfer requests over the term of the current contract.

These ratios are merely “minimum standards” and not a cap that can be imposed by management to limit the number of applicants. Therefore, in order to comply with the memo, management is required to hire no fewer than the numbers set out in the ratio when local economic or unemployment conditions or EEO factors justify hiring from entrance registers.

In the case of the Motor Vehicle Craft, note that Article 39.1.G.1 also prescribes that when the Postal Service proposes to open a new facility, priority consideration must be given to all requests for transfer of Motor Vehicle Craft employees from other installations before new employees are hired.

In addition, Article 39.1.G.2 provides that consideration will be given to qualified Motor Vehicle Craft employees requesting transfers where no employees are qualified to bid or desire the position that is available at the completion of the posting period. **(See page 49 for a copy of Article 39.1.G.1 and Article 39.1.G.2)**

## Service Requirements

The Transfer Memo also sets out minimum service requirements before reassignments can be initiated. When an individual is seeking reassignment within the same District or to an installation in an adjacent District, he or she must already have served 18 months in his/her present installation. The employee is also required to remain in the new installation to which he or she is reassigned for a period of 18 months, unless released by the installation head earlier, before seeking another

transfer. Exceptions from the 18-month requirement apply: 1) in the case of an employee who requests to return to the installation where he/she previously worked, or (2) where an employee can substantially increase his or her number of hours (eight or more per week) by transferring to another installation as long as he or she meets other criteria, in which case, the lock-in period will be 12 months. In addition, employees serving under a craft lock-in period must satisfy those requirements before being reassigned to another installation.

For transfers to other geographical regions, the employee must have at least one year of service in his or her present installation prior to seeking reassignment. In addition, if he or she is reassigned under the Transfer Memo, the individual must remain in the new installation for a period of one year, unless released by the installation head earlier, before seeking another transfer, except in the case of an employee who requests to return to the installation to which he/she previously worked. Craft lock-in periods must also be served before being reassigned to other installations.

Significantly also, the Transfer MOU provides that “[u]nder no circumstances will employees be requested or required to resign, and then be reinstated” to circumvent the provisions of the MOU.

## Filing a Transfer Request

In seeking a transfer, requests should be made by using *eReassign* which is the Postal Service’s online reassignment-opportunities and transfer-request system or by submitting a request in writing to the installation head or Human Resources for the installation(s) to which the employee desires to transfer. The request should

contain a list of all positions for which the individual is qualified, and the locations to which he/she desires to transfer. When using *eReassign*, each request for transfer can be for one specific District and up to five offices and crafts per request. Also, multiple requests can be made so as to cover other Districts.

If it isn't possible to use *eReassign*, an employee can submit the same information in a written request for a transfer to Human Resources or the installation head(s) for the installation(s) to which he/she wishes to transfer. Upon receipt, Human Resources or the installation head must acknowledge the request in writing in a timely manner (Article 12, Section 6). HR or the installation head will then seek personnel information about the potential transferee from his/her facility such as the employee's official personnel file, supervisors' evaluations, and safety and attendance records, and will forward them to a selecting official.

The Transfer Memo prescribes that requests will be considered by installation heads "in the order received... consistent with the vacancies being filled and the type of positions requested." *eReassign* procedures also require that active requests be processed on a first-come first serve basis. Note, however, that the MOU also provides that installation heads "may continue to fill authorized vacancies first through promotion, internal reassignment and change to lower level, transfer from other agencies, reinstatements, etc. consistent with existing regulations and applicable provisions of the National Agreement."

If both installation heads agree that an employee should be reassigned, they must "arrange for mutually agreeable reassignment and reporting dates."

"Mutual agreement" means a consensus must be reached between postmasters on a reporting date.

## Contesting a Transfer Decision

Transfer denials, though ultimately based on a decision by the head of the installation to which an employee is seeking a transfer, are grieved at the postal facility from which an employee desires to transfer. Though this avenue for review of transfer decisions is not specifically prescribed by Article 12 of the National Agreement and the Transfer Memo, it is apparent from application of Article 15 under the circumstances.

Several arbitration awards, including AIRS #46374 (Arbitrator Levak) and AIRS #46379, indicate that consistent with Article 15.2, Step 1(a), an aggrieved employee or the union must initiate its Step 1 grievance with the employee's immediate supervisor. Arbitrator Levak found no reason to distinguish transfer-related grievances from other grievances and noted that language in Article 15 is clear and unequivocal about where a grievance is to originate. However, note that at least one arbitrator has decided that a grievance settlement granting a transfer was improper since it was agreed to between the union and management's Step 1 designee at the facility where the employee worked at the time of the grievance rather than at the facility to which he desired a transfer. He relied improperly on reasoning that this management official lacked authority to make a transfer decision over the objection of the management official in the other facility. (AIRS # 34195)



## New Rules for Employees Subject to Excessing

The Memo regarding “Transfer Opportunities to Minimize Excessing” contains some similar procedures as the original Transfer MOU, but eliminates certain limitations to transferring that exist under the longstanding memo. All APWU-represented employees in an installation and craft experiencing excessing from the craft or installation may voluntarily submit requests for transfer through *eReassign*. These affected employees are given *priority consideration* (i.e., “preferred listing within *eReassign* by date order”) to transfer from an impacted craft and installation.

Employees seeking transfers under the new memo are required to meet minimum qualifications for the position that is being sought, but affected employees’ work, attendance and safety records are not to be considered by management when they are applying for transfers due to excessing. Ratios outlined in the Transfer Memo are not applicable in the case of affected employees requesting transfer as a result of impending excessing. Also, employees affected by excessing are not required to have 18 or 12 months of service in their present installation before requesting transfers. In addition, craft lock-in periods will not apply to employees who qualify for priority consideration; and, neither the gaining nor losing installation can place a hold on an employee’s transfer.

Selections by installations accepting transfer requests are made on a seniority basis, using craft installation seniority from the losing installation. In the event of a seniority tie, the tie-breaker method is to first consider total career postal time, and

then to look at the entered-on-duty dates.

Similar to transfers under the older Transfer Memo, an employee’s seniority in the gaining installation is established by the respective gaining-craft article in the Collective Bargaining Agreement based on the employee being a voluntary transfer rather than an excessed employee. Accordingly, when changing from one craft to another, or transferring from one installation to another, employees will begin a new period of seniority.

If an employee requests a transfer and later declines the opportunity, his or her name will be removed from the priority *eReassign* pending request list at the declined location. Such employees immediately become available for involuntary Article 12 reassignments.

Same-craft transfers will be approved before cross-craft transfers, and there is no priority consideration for transfers to non-APWU craft positions. In addition, vacancies in impacted crafts or occupational groups under Article 12 withholding are not eligible for transfer requests.

Unlike transfers under the Transfer Memo, any disputes arising under the application of the Transfer Opportunities to Minimize Excessing MOU may not be grieved and are processed at the Area level. Disputes that cannot be resolved there will be forwarded to the Headquarters Level.

## Summary of Steps for Obtaining Voluntary Transfers

The following are some steps an employee should be advised to take when he or she is requesting a voluntary transfer:

- Apply for a transfer using *eReassign* or write to the installation head or Human Resources for the installation to which he or she wishes to transfer and list all positions for which he/she is qualified and is willing to perform, and specify all locations to which he/she wishes to transfer;
- Independently check with the installation head or the local union at the new installation to find out for which positions the Postal Service is hiring. If management is hiring from off-the-street, then the employee may have grounds for asserting that he or she has been unreasonably denied a transfer;
- If an employee believes he or she has been unreasonably denied a transfer, the matter should be brought to the attention of his/her steward in the installation from which he or she seeks to transfer for the purpose of processing a grievance in the case of a desired transfer under the original Transfer MOU, or for processing a dispute at the Area Level in the case of transfers sought under the MOU re: transfers in the case of excessing.

Once a transfer is requested, management should do the following:

- Acknowledge receipt of the transfer request in writing;
- Transmit a work performance evaluation of the employee by his/her supervisor to Human Resources or the installation head for the facility to which the employee desires a transfer (for transfers under the original Transfer MOU);
- Forward an employee's attendance and safety records to the potential gaining facility (for transfers under the original Transfer MOU) ;
- Consider the above records along with other requests in the order received and determine whether to approve or deny the request (for transfers under the original Transfer MOU);
- Approve or deny the transfer request in writing with the reasons for the decision and forward this decision to the employee.

It is suggested that the union take the following steps:

- Determine if the employee is eligible for a transfer; i.e. whether he or she has been in his/her current installation for the required 12 or 18 month period before seeking a transfer under the original Transfer MOU, and whether he/she meets the minimum qualifications for positions to which he/she has requested to be reassigned;
- Contact the local union at the facility to which the employee seeks to transfer to find out any pertinent information about the transfer history at that facility;
- File a request for information pertaining to the number of employees hired off the street in the facility to which an employee requests a transfer, and seek documentation such as accident reports, attendance information including Forms 3971 or 3972 if an employee's safety record or attendance is an issue, and supervisory evaluations (in the case of a transfer under the original Transfer MOU).



**GRIEVANCE/ARBITRATION OF VOLUNTARY TRANSFERS**

**NOTE: The information that follows on voluntary transfers under the original Transfer MOU was obtained from reviewing many arbitration awards and EEO cases, as well as contractual and handbook language, for both APWU and NALC cases over the time period from 1984 until the present.**

**Burden of Proof in Grievance Procedure**

The union can advance arguments such as the following on behalf of a person whose transfer has been denied.

- The gaining installation didn't afford full consideration and unreasonably denied the employee's request based on a review of his or her qualifications and the needs of the installation;
- Local considerations may not prevail over the need to comply with ratios for hiring transferees consistent with the Transfer Memo provisions.

In establishing that denial of an employee's transfer was unwarranted, the union has the initial burden of proof. However, once a transfer applicant demonstrates that he or she has a satisfactory record and has minimum qualifications for positions to which he/she has requested reassignment, he or she has established a prima facie case that a transfer is warranted (AIRS #46374). The burden then shifts to the Postal Service to show that the standards it has used are not unreasonable and the denial of the employee's request complied with applicable memo guidelines. If the Service does not satisfactorily prove that

it has met these guidelines or the union has adequately rebutted the USPS's contentions, the union will prevail and a transfer will be ordered. In reaching a decision, arbitrators will usually determine whether management's actions in denying a transfer were arbitrary, capricious or discriminatory. See Airs #27308 where an arbitrator indicated that a union's challenge to denial of an employee's transfer request may be on the basis that "management's decision was unreasonable under the facts, or capricious, arbitrary, or discriminatory."

Arbitrators have rejected arguments that the Management Rights clause (Article 3), when considered in conjunction with the Transfer Memo, gives the Service broad latitude to determine when or who will be granted a transfer. They also have refused to accept the contention that the Transfer Memo merely provides guidelines and cannot be interpreted as mandatory requirements. (AIRS #46374; AIRS #35752; AIRS #46375; AIRS #27308; AIRS #26472).

**Definition of Arbitrary Conduct by Management**

Arbitrator Benn reasoned that the standard for reviewing the Postal Service's decisions in a transfer case is "whether or not it engaged in arbitrary or capricious conduct." He then defined arbitrary action as "when it is without rational basis, justification or excuse." (AIRS #17134)

A second award indicated that "arbitral review of the reasonableness of management's action seeks to determine if the action is arbitrary, capricious, or discriminatory." Arbitrator Hauck said that

the term arbitrary “means not governed by principle and refers to whether the action taken by Management was based on personal preference or selection.” He stated that “[c]apricious refers to conduct which is unpredictable – subject to sudden, unexpected, or unannounced change” and “discriminatory means showing differentiation or favoritism in the treatment of employees; such as a failure to treat all equally.” In a case where management rescinded an employee’s approved transfer only five days before it was to become

effective, the arbitrator ruled that the union provided a preponderance of evidence that ... the Employer’s rescind [sic] of the approved transfer is

*unintentionally capricious.*” He stressed that though the evidence didn’t show that management didn’t act in good faith, the Postal Service “subjected the grievant to sudden, unexpected and unannounced change.” He noted that the grievant had been “officially told his transfer was approved, allowed to prepare for the move at his own expense, and informed *after the last reasonable moment* that the transfer was rescinded.” “Management treated [the grievant] in a manner which produced an unintentional but harsh result,” according to the arbitrator, and its “action fails to pass the test of reasonableness.” (AIRS #30608)

In another award, Arbitrator Shea ruled that “the unexplained inability of postal management at the San Juan office [from which an employee sought a transfer] to maintain, to locate or to

provide the Grievant’s attendance records to the Orlando Personnel Office [to which the grievant desired to transfer] violated its obligations under Section D. of the Memorandum [on Transfers] ....” He reasoned that such a violation deprived the grievant of his contractual right to have his transfer fully considered by the “Receiving Location.” Moreover, when management in the Puerto Rico office decided to close out the grievant’s transfer request because it could not locate his attendance records, this “constituted a de

facto denial of that request without proper consideration” and “therefore, arbitrary and capricious [action] ... in violation of the Agreement.” (AIRS # 31097)

In addition,

Arbitrator Miles made reference to the Postal Service’s own “Decision Analysis Tool” which recognizes the arbitrary and capricious standard, in a case involving a transfer request denied based on an employee’s safety record. The Analysis Tool, which is to be used by postmasters, states that “[a]n accident report can only be used when it is determined that the accident was due to the employee’s unsafe act. You must be able to show that a denial for a safety-related reason is based on a representative time period, reasonable length in time, and that the employee was responsible for the unsafe act. *Do not establish any arbitrary or additional standards.*” [Emphasis supplied] Then, the arbitrator concluded that the Postal Service failed to meet this standard: it failed to show that an occupational injury constituted an accident due to an unsafe

***“Arbitral review of the reasonableness of management’s action [in denying a transfer request] seeks to determine if the action is arbitrary, capricious or discriminatory.”***

act and the evidence proved that a vehicle accident was only minor and occurred four years before an employee's transfer request. (AIRS #46057)

### **“Full Consideration” Requirement Defined**

One arbitrator determined that the requirement that management give “full consideration to the work records of employees” means that the records “must be carefully considered in light of the employee’s full work record and individual circumstances.” Arbitrator Stallworth stressed that “the notion of ‘full consideration’ must involve more than a cursory or perfunctory examination of the work, attendance and safety records of an employee who seeks reassignment” and requires “management to duly investigate and consider all factors when reviewing a request for transfer.” To support this finding, he relied on language in the Transfer Memo and also in Section 261 of the EL-311 Handbook that provides “[w]hen qualified employees are not available within an installation, qualified applicants from other postal installations must be considered.” Note that the EL-311 has been replaced by the EL-312 Handbook which has a similar provision in Section 232. 41. **(See page 50 of this CBR.)** In this case, the arbitrator found that management’s reason, that the employee had an insufficient sick leave balance, was inadequate because management failed to take into consideration evidence that the employee’s leave may have been covered by FMLA and the employee had been involved in accidents that may have resulted in some of his absences. Moreover, he cited the fact that the employee didn’t receive any discipline

for safety infractions or because of attendance problems. (AIRS #34005)

Arbitrator King determined that the Postal Service’s failure to investigate contradictions between a transfer applicant’s attendance records and a supervisor’s evaluation of the grievant’s work, safety and attendance record as good to very good before it denied her transfer violated the terms of the Transfer MOU. He cited the fact that the “MOU directs full consideration of the Grievant’s work, attendance and safety record.” In addition, he said that “[w]hile an employee may be denied transfer based on attendance, full consideration demands that work and safety records be factored in before making a decision.” In this case, he concluded that the gaining facility “did not seek to reconcile what it determined to be a record of unsatisfactory attendance with the immediate supervisor’s satisfaction with [the grievant’s] attendance and his more than satisfaction with her work performance.” “A decision based [on] such contradictory assessments without an attempt to resolve the conflict does not amount to the full consideration mandated by the parties National Agreement,” he continued. (AIRS #36538)

In a recent award, Arbitrator Buckalew indicated that “[t]he fact that an employee has no disciplinary record does not by itself require management to grant the [transfer] request, but where the employee requesting the transfer is qualified for the work and otherwise meets the criteria of the contract, there must be credible, persuasive evidence that the decision was based on a full consideration of the work, attendance and safety records of the employee and thus not arbitrary and capricious.” He stressed that “[n]o evidence demonstrating a less than satisfactory work, attendance, and safety

record was proffered here and there is no evidence that ... management looked beyond the perfunctory comments of a few supervisors who worked with her sporadically.” (AIRS #46115) Also see further discussion of this case in other sections of this article.

In addition, another arbitrator found that the Postal Service’s failure to give any consideration to a transfer employee’s record at the time it filled a vacant custodial position in-house constituted a violation of the Transfer Memo. Moreover, she indicated that even though management argued that it could fill the position first through an internal reassignment before it considered a transfer, such an argument wasn’t raised during the grievance procedure and therefore could not be cited to sustain its burden of proof. (AIRS #26472)

In a case in which the evidence showed that a manager in the installation where an employee desired a transfer had never seen her Official Personnel Folder and didn’t consider the losing facility’s evaluation of her work

performance or the OPF, the arbitrator sustained the grievance. Also, he found that there was no basis for the manager’s determination that the grievant’s accident history provided a basis for denial of her transfer request. He found that two of the incidents, one described as stress-anxiety and the other as dust, and the other two incidents were eight to ten years before

the employee requested the transfer. Moreover, he ruled that reassignment of a letter carrier from the installation into the vacant custodial position violated the EL-304 since the grievant who desired to transfer into the position was a qualified custodian. (AIRS #44351)

Also, an arbitrator ruled that the Postal Service’s reliance on an employee’s low sick leave balance to deny an employee a transfer was improper since it had “an obligation to look at the overall work record, and furthermore, to find out the circumstances surrounding the use of sick leave.” In that case, Arbitrator Franklin ordered that the grievant be offered the first position to open in his present grade or one grade below for which he was qualified in the Florida offices to which he had previously applied. (AIRS #19332)

Another arbitrator indicated that the Postal Service failed to comply with the Transfer Memo’s requirement by merely placing an employee’s name on a list for reassignment since other employees ahead of

the grievant on that list who received reassignments were ineligible by virtue of their length of service (i.e. 18 months for transfers within a geographical district or 12 months for transfers outside a geographical district). Also, Arbitrator Drucker found that the San Juan office didn’t provide essential information to the grievant and the local in a timely way

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which delayed his consideration for a transfer. Finally, the arbitrator found that information on the employee's attendance that had been transmitted to the gaining office had been inaccurate. Based on these findings, the arbitrator ordered that information that is accurate and current be sent to the gaining office, and also to the union and grievant so they "may review them for any inaccuracies within the matters that are subject to objective verification." In addition, she directed that if the employee still wished to transfer, he be given another opportunity to transfer upon making another written request. She stressed that his request be given "full and fair consideration consistent with the provisions of the MOU." (AIRS #42710 & 42712).

**Specific Reasons For Denying Transfers**

Factors that have been considered sufficient for denying transfers have included attendance and safety reasons, as well as evidence of discipline records. (See AIRS #46375; AIRS #46389; and AIRS #46376). However, management has to provide a specific reason for denying a transfer request and support it with specific evidence. In one case, an arbitrator indicated that management's "general statement that an impartial review was considered and [a grievant's] transfer request was not approved" was insufficient

***An arbitrator indicated that management's "general statement that an impartial review was considered and [a grievant's] transfer request was not approved" was insufficient to uphold its decision to deny the employee's transfer.***

to uphold its decision to deny the employee's transfer. He noted that during the grievance procedure and at arbitration, "management failed to state whether the grievant's work, attendance or safety record was a factor for his transfer not being approved." (AIRS #44054). Another arbitration award found that the Postal Service failed to offer "a scintilla of information" in support of an "affirmative defense, that proper consideration

was afforded [to a grievant seeking a transfer]." The arbitrator noted that the grievant's first transfer request was never acknowledged and following his second request, he was informed that the Postal Service was under "hiring constraints" and the only way he could obtain approval was if the Area level provided it. However, he found that the Postal Service presented no evidence that such hiring constraints existed or that Area level approval was sought. Arbitrator Pecklers thus sustained APWU's grievance. (AIRS #39410)

**Improper Reliance on FMLA Leave/Disability Absences**

Also see AIRS # 45794 where an arbitrator noted that reliance on absences of an employee that are covered by the Family and Medical Leave Act or discipline that has been rescinded and is no longer "live" is inappropriate in deciding to deny an employee's request for a transfer. In another case, an arbitrator found that



there was “no rational basis, justification or excuse” for the Postal Service’s denial of an employee’s transfer request, citing her poor attendance record, since the employee had never been disciplined for attendance-related problems, her sick leave usage “which was taken for maternity purposes has not been shown to be out of line,” and she had only been tardy for a few minute intervals on only ten occasions during the two years prior to her request. (AIRS #17134). Also see AIRS #34005, cited previously.

In addition, exclusive reliance by the Postal Service on an employee’s low sick leave balance to deny his transfer request was found to be a violation of the Rehabilitation Act since management was fully aware the employee used sick leave for operations due to a service-connected physical disability. The disabling condition, a knee impairment, did not impact the employee’s ability to perform the essential duties of his job as a custodian that was also the position to which he sought a transfer. The Equal Employment Opportunity Commission ordered that the Postal Service conduct an investigation

into the employee’s entitlement to compensatory damages due to its failure to transfer him to a facility in Hawaii, and provide training in the obligations and duties imposed by the Rehabilitation Act to its managers. It noted that the employee had already been transferred to the Honolulu Post Office by the time of its decision. Also in its ruling, the EEOC stressed that management failed to show that undue hardship would be posed by excusing the employee’s disability-related absences. It cited an August 27, 1993 Memorandum to Managers on Postal Service Employee Requests for Transfers which states in part: “[w]e would also strongly suggest that where there are one or two questions with regard to the viability of the employee for the position, i.e., such as low sick leave balance, that it is incumbent upon responsible management to obtain additional information into that situation.” (Rajterowksi v. Runyon, EEOC Appeal No. 01956733, 1/5/1998) **Also see pages 51-52 for a copy of the Aug. 27, 1993 Memorandum to Managers re: Employee Requests for Transfer.**

## UNREASONABLE DENIALS

**Subjective or Speculative Reasons for Denials**

In one of the earlier decisions that was favorable to a transferee, Arbitrator Dobranski indicated that the Service could not base its refusal to transfer an employee on subjective factors. (AIRS #35752). This arbitrator, along with two others (Arbitrator Levak in AIRS #46374 and Arbitrator Barker in AIRS #46375), disagreed with the Service's contention that the Transfer Memo delineated principles permitting "broad managerial discretion," and held that the memo constitutes "enforceable standards or criteria" which narrowly restrict managerial discretion. Another arbitrator overturned the Postal Service's denial of an employee's request for transfer in part because it was based upon "improper subjective speculation by ... management." The arbitrator cited the fact that management improperly relied on evidence that the grievant had been on light duty while suffering from carpal tunnel syndrome and from injuries resulting from an automobile accident. The arbitrator found that such factors had not reduced the "grievant's long term level of performance" as evidenced by the fact that the employee passed a physical examination taken to secure her transfer (AIRS #27308).

Arbitrator Hauck also ruled that the Postal Service's denial of an employee's transfer should be overturned because it was "arbitrary." He indicated that "action is arbitrary when it is without consideration and in disregard of facts and circumstances of a case, without rational basis, justification or excuse." The

arbitrator determined that management in the Pennsylvania facility to which the Seattle employee wanted to transfer denied her reassignment on the "basis of an inaccurate evaluation: of the grievant's OPF; of the grievant's easily ascertainable work history as experienced, judged and openly shared by three different Seattle managers; and, of the grievant's medical condition." He further found that management "acted arbitrarily by submitting [the employee] to a physical examination which she passed, and then deciding that the grievant's physical examination revealed problems which justified transfer denial." (AIRS #27308)

In another award in an NALC case, Arbitrator Williams cited a 1993 Memorandum for USPS Area Managers on Transfers which said that "[w]hile we understand that attendance is extremely important to all our operations, the use of sick leave balance per se as a sole determining factor is inappropriate. This is especially true in those situations where sick leave was used for a one time 'serious illness' and other than that attendance was more than satisfactory .... We would also strongly suggest that where there are one or two questions with regard to the viability of the employee for the position, i.e., such as a low sick leave balance, that *it is incumbent upon responsible management to obtain additional information into that situation.*"[*Emphasis supplied*] The arbitrator determined that where an employee was bypassed continuously while 15 other employees were reassigned to the gaining facility out of a total of 60 new employees added to the facility, management at the gaining facility failed to seek more information regarding the

employee's sick leave record when there was no explanation regarding the reasons for a 16-hour sick leave balance. The arbitrator noted that the grievant in a letter to the Postal Service provided some information that indicated he had on off-duty back injury in 1988 in which he had to be advanced additional sick leave but he had no back problem at this time, and also he was hospitalized for ten weeks in a VA hospital. In addition, he found that for the last seven months of 1994, during the year the grievant sought a transfer, he had taken

only two days of sick leave. Arbitrator Williams concluded that "more information in regard to the sick leave balance was needed" and "[i]f it had been received, it probably would have changed the grievant's status from a bypassed qualified to transfer at the next opening." (AIRS #46377)

Another arbitrator stressed that "[c]onsiderations grounded both in the literal language of the Memorandum of Understanding [on transfers], and in the guiding spirit and intendment of the 1984 memorandum from which it gains its genesis, require that management abstain from implementing harsh, over-restrictive limitations on transfers, and that the reasons for denying a specific transfer be set forth in detail." Moreover, he indicated that "[c]onsistent with

concepts of due process, generally, and the requirements of the National Agreement, specifically, arbitrary and capricious resolutions are impermissible." In addition, the arbitrator said that since selections among competing transfer requests occur, "uniform standards and criteria must be established and followed." In this case, the employee was denied a transfer because of attendance reasons while 15 employees were transferred into the facility to which she desired a transfer. The attendance deficiencies relied upon by

***Arbitrator Barker stressed that "[c]onsiderations grounded both in the literal language of the Memorandum of Understanding [on transfers], and in the guiding spirit and intendment of the 1984 memorandum from which it gains its genesis, require that management abstain from implementing harsh, over-restrictive limitations on transfers, and that the reasons for denying a specific transfer be set forth in detail."***

management were in a year in which the grievant was pregnant and included seven instances of absences tied to nonscheduled days. However, the employee's record showed that for the following

eleven months, the employee had no absences. Arbitrator Barker indicated that the Postal Service was required to "come forward with specifics, showing that, either on an individual basis, taking into consideration a representative time period reasonable in length, the grievant's attendance was deficient or unsatisfactory; or in a comparative sense, measured against other applicants for reassignment with whom the grievant was appropriately grouped and categorized, her attendance was inferior or not sufficiently meritorious to warrant approval." He found that the Postal Service failed to make this showing,

and remarked that another employee who had been granted a transfer had a similar record as the grievant. (AIRS #46378)

In another award, an arbitrator indicated that though “absenteeism must be a major consideration in gauging whether someone is to be accepted for a transfer”, management at the facility to which the grievant sought a transfer failed to take into consideration that the grievant had not been disciplined and that over half of the employee’s absences were scheduled as well as being related to his service-connected disability. She stressed that the gaining facility’s “failure to take into account the Grievant’s service-related disability and the twenty-four hours that he needed for VA appointments is a serious matter.” Arbitrator Gold, however, declined to base her decision on reasoning that the gaining facility’s standard of a 3% absence rate, with anything less being a reason for denying a transfer, was unreasonable or a basis to sustain the grievance. She indicated instead that the grievant’s record fell within that standard. (AIRS # 20845)

### **Poor Attitude as Inappropriate Reason for Denial**

In AIRS #35752, the Service denied an employee’s request for transfer due to poor attitude ratings by the employee’s supervisor and similar reflections of the employee’s conduct by the head of the installation to which he wanted to transfer. The arbitrator found that there was no specific evidence to support the negative supervisory evaluations and that the supervisory evaluations on the whole rated him satisfactory in all other performance categories. In addition, the arbitrator was struck by the fact that the supervisory comments reflected on the

grievant’s strong union affiliations which cast a discriminatory light on the transfer denial. Such subjective and ambiguous perceptions could not be considered a basis for denying the employee a transfer.

Arbitrator Hardin’s denial of an employee’s request for transfer on the basis that he was unable to get along with his co-workers, and could not perform the duties of his job for a brief period was considered improper (AIRS #46379). The arbitrator indicated that the Postal Service could not rely on poor attitude or performance since these incidents occurred shortly after the employee started work for the post office and an evaluation had rated him satisfactory and recommended that he be retained as a permanent employee.

Arbitrator Hardin also suggested that the Postal Service was barred from alleging reasons such as poor attendance for its transfer decision since it did not raise this objection in its letter denying the grievant his transfer.

In another case, an employee had remarked to the postmaster of an office to which he desired a transfer that he didn’t “get along” with management very well, and such a comment was one of the reasons for denying his transfer. Arbitrator Fullmer indicated that while such a comment showed “a lack of judgment”, the employee claimed he only meant he didn’t get along with supervisors who didn’t direct the workforce efficiently. Also, he stressed that if an employee’s work record had been affected by not getting along with his supervisors, he would have been disciplined. However, the arbitrator found that the grievant’s ten years at the facility from which he desired a transfer didn’t result in any disciplinary action for insubordination. Therefore, he concluded, there was no accurate documentation that



his work record was unsatisfactory. (AIRS # 33373)

In a recent case involving an employee seeking to transfer back to a facility to which she continued to be assigned loaner hours and where she previously had worked eight years earlier, the MDO denied her transfer on the basis that “it would not be in the best interest of postal operations ... to accept your transfer.” The evidence showed the MDO informed the union that he relied on supervisory recommendations to deny the requested transfer. The head of the gaining installation questioned three of the employee’s supervisors at his facility who made written statements by e-mail regarding the grievant. Two criticized her in “general terms”. One indicated that she “requires a lot of attention” and “she is a disruptive force, at best”; the other said she had “less than acceptable work performance”. However, the former admitted in the grievance record that he hadn’t disciplined the grievant or issued any official discussions due to her behavior, and the latter acknowledged she hadn’t supervised her while she was a loaner and never counseled or disciplined her. The third supervisor interviewed informed the MDO she had no problem with the transfer request, and the postmaster of the losing facility had no complaints about the grievant or her transfer. Arbitrator Buckalew found that the evidence failed to support a requirement that supervisory evaluations be “valid and to the point, with unsatisfactory work records accurately documented.” He indicated that contrary to the requirement that full consideration be given to an employee’s work, attendance and safety records and not be arbitrary or capricious, “the MDO misunderstood his contractual obligation

and relied on undocumented, and seemingly stale and/or trivial, complaints to deny her requested reassignment.” (AIRS # 46115)

However, another arbitrator rejected the union’s argument that reliance on information provided in a supervisory evaluation of the grievant that wasn’t accurately documented was improper. The union had cited the fact that the supervisor hadn’t recently supervised the grievant. The arbitrator found that though the supervisory evaluation rated the employee’s attitude as “poor”, the installation head reviewing the evaluation didn’t base his decision on that rating but on his attendance and accident record for which there was sufficient documentation. Moreover, she noted that the supervisor had in fact been assigned to the grievant’s unit in the past, and local management can determine the appropriate supervisor to complete an evaluation. (AIRS # 45794)

## **Nepotism as Reason for Denial**

In AIRS #9456, Arbitrator Martin held that an employee transfer may not be prohibited merely because citizens of the small town to which she sought a transfer might disapprove of three members of the same family working at the same postal facility. The employee sought a transfer because she wanted to work in Arnold, Nebraska where she lived rather than commuting 40 miles to North Platte, Nebraska. Two of her relatives worked in the Arnold, Nebraska post office; her father as a rural carrier and her husband as a substitute rural carrier. The grievant had an excellent record and was highly rated by her immediate supervisor.

The Postmaster denied the transfer, citing Paragraph 312.312 of the P-11 Handbook which forbade the appearance



of impropriety in the event relatives of then-current postal employees are appointed or promoted. **(See Section 513.31 of the EL-312 Handbook on page 53 of this CBR for the similar current rule on nepotism or hiring/promotion of relatives)** The arbitrator summarily dismissed the Postal Service’s argument on the basis that the provision was completely inapplicable to the situation of transfers. Moreover, the arbitrator said that reliance on local employment conditions to deny a transfer could not “be expanded to include the possibility of gossip, and hard feelings over the employment of a qualified person to the exclusion of another who did not get the job.”

However, see AIRS # 33748 where denial of an employee’s transfer to a facility where his father was working as a supervisor was upheld based on the above P-11 Handbook provision. The arbitrator noted that in this case, the grievant would have been working under a supervisor who directly reported to the grievant’s father. He reasoned that “if the transfer occurred, and [the grievant] later bid on better assignments, or choice work schedules, his request could create the appearance of impropriety in the eyes of the public or other Postal Service workers no matter how the issue was resolved.”

**REQUIREMENT OF EXCELLENCE RULED IMPROPER**

**Re: Performance Record**

In one of the better reasoned decisions on transfers, Arbitrator Levak indicated that the Service could not limit transfers to those employees who exhibit “excellent performance” (AIRS #46374). Under the circumstances in this case, the employee seeking a transfer had been given an evaluation from his immediate supervisor as having an “exemplary” record on the basis of his promptness, reliability and ability to relate with other employees and customers at the facility from which he was seeking a transfer.

Despite this employee’s supervisory recommendation, the installation to which he sought a transfer rejected his application citing his lack of experience in performing at the standard casing and delivery rates for the area where the facility was located. In addition, local management felt that it had the discretion to select only the “very best” or “most

excellent” of employees seeking transfers to vacancies as they became available.

The arbitrator disagreed with the Postal Service’s hiring criteria, finding that a prerequisite of excellence for transferees violated Paragraphs C and D of the Transfer Memo by unreasonably denying the transfer request and contravening fairness considerations as measures for judging a potential transferee’s performance.

In another award, Arbitrator Kelly decided that though a maintenance employee who was seeking a transfer to a Level 5 Maintenance Mechanic position wasn’t on the promotion register for that job, he had passed the entrance examination and mailed in his application and thus met the minimum qualifications for the job under the Transfer Memo and should have been allowed to transfer. He also noted that the Postal Service’s objection at arbitration that the grievant wasn’t eligible for the Maintenance

Mechanic job at the time he requested a transfer had not been raised during the grievance procedure and couldn't be considered. (AIRS # 39816) However, see AIRS # 41348 where Arbitrator Simon found that an employee who was denied a transfer to an ET-10 job in another facility did not have to be placed ahead of new hires for the position. He acknowledged that while the EL-304 indicated that a maintenance craft employee who is a career postal employee would have preference over entrance register eligibles for a vacant maintenance position, he didn't have to be placed ahead of new hires in the pecking order until he had been certified as qualified following a review of documentation from his former facility on the issue of work, attendance and safety records.

Note also that an arbitrator refused to overturn management's decision to deny a transfer on the basis that it was improperly imposing a "best qualified" standard. He ruled that such a decision was "not unreasonable or unfair" since the Postal Service didn't have to grant the request merely on the basis of an employee meeting minimum qualifications for the position. Arbitrator Wolf stressed that the reference in the Transfer MOU to "minimum qualifications" only relates to an employee's satisfaction of a Standard Position Description's requirements. Moreover, according to the arbitrator, even if an employee is qualified, he or she may be denied a transfer "as long as the grounds for doing so are reasonable" and "there is a reasonable basis for believing that the Grievant's work, attendance or safety record is unacceptable." In this case, since one of three supervisory evaluations from locations where the employee worked indicated that the employee "required added monitoring",

and the supervisor considering the employee's record knew the evaluating supervisor personally and trusted his judgment, the arbitrator indicated that he could not say that such an evaluation was unreasonable in reaching his decision. (AIRS # 33013)

However, another arbitrator stated that "[w]hile the Transfer Memo affords management some discretion in evaluating the minimal qualifications of applicants and determining that they have 'acceptable work, attendance, and safety records', management's discretion is not unfettered." He went on to say that "[w]here evidence emerges that an applicant's transfer request languished on the roster while subsequent applicants bypassed the Grievant and were ultimately granted transfers for which he was qualified, the Arbitrator is compelled to find a violation of the MOU which is intended to provide an orderly and equitable transfer process, as opposed to the arbitrary and unreasonable denial reflected in the instant award." (AIRS #35206)

## **Re: Safety Record**

In an award, Arbitrator Torres determined that the Postal Service set "an arbitrarily high standard of review for transfer applicants" where an employee was denied a transfer based on his experiencing one work-related accident. She stressed that "this arbitrarily high standard is not in keeping with the language and intent of the National Memorandum which sets a standard of 'acceptable' [regarding work, attendance and safety records for applicants]." The manager who denied the transfer testified that he reviewed the attendance files of all transfer applicants who had three unscheduled absences. (AIRS #28578)

Another arbitrator found that the Postal Service's reliance on an employee's submission of five CA-1 forms indicating he had been involved in accidents was insufficient to provide a basis for denying his transfer. He noted that the grievant only lost work time as a result of one of the accidents and for only a few days, and there was no indication as to whether or not the days off following the accident were scheduled work days. Moreover, he stressed that "all Postal employees are obligated to submit an accident report for any and all accidents regardless of how significant or severe the accident has been." In this case, therefore, the Postal Service is improperly relying on this requirement to deny the grievant an opportunity to transfer, according to the arbitrator. In addition, Arbitrator Condon found that the only reason given by the Postal Service for denying the employee's transfer at the time he requested a transfer was that it wasn't "in the best interests of this office" and therefore, no explanation had been given the grievant "as to what was unacceptable so that he could attempt to improve himself in order to be eligible for transfer some time in the future." (AIRS #16479)

Also see AIRS #46057 where the Postal Service's decision to deny an employee's transfer based on an allegedly unsatisfactory safety record was overturned. The arbitrator found that the first of the two accidents upon which management relied, which involved an occupational injury due to repetitive movement, should not have been considered since there was no showing it was due to an unsafe act and the other accident with a vehicle was "very minor" since it resulted in no damage or discipline to the employee. Arbitrator Miles stressed that the Postal Service unreasonably

denied the employee's transfer request since it failed "to go behind the limited information set forth in the Employee Accident History" and review the Form 1769 or speak with management from the employee's facility about the items listed. (However, note that in AIRS # 45155 another arbitrator found that the Postal Service's denial of an employee's request for transfer based solely on the "safety and health display" of an employee's accident history indicating four accidents within a five-year period of the date he requested a transfer didn't warrant sustaining the employee's grievance. She reasoned that the Postal Service didn't have to refer to Form 1769 since the "safety and health display" had a brief description of the nature of the accidents and the Transfer memo doesn't require that "the seriousness of each accident listed be explored and evaluated.")

## **Re: Attendance Record**

An arbitrator in an NALC case ruled that an Area's transfer policy had "an excessively high standard in denying transfer requests beyond that required for an employee to be termed satisfactory, and beyond and inconsistent with the standard expressed in the intent and mandate of the memo agreement guidelines." He continued that the "guidelines [for allowing transfers] do not suggest the Dallas restrictiveness of only exceptional employees above the average, but rather the opposite, that the benefit of transfer considerations are to be extended to employees in general, if qualified and satisfactory." Arbitrator Jacobowski arrived at this conclusion on the basis of evidence that Dallas approved only one carrier transfer as compared to

hiring 142 carriers from the outside over a time period of approximately six months. The arbitrator also noted that there was merit to the union's claim that Dallas "has an excessively rigid standard on sick leave usage" which was shown by "[t]heir general rule of thumb ... that a sick leave balance of less than 50% indicates a poor attendance record." He questioned whether this standard was reasonable given ELM Section 513.391.c which indicates that in the case of considering an employee for restricted sick leave "[n]o minimum sick leave balance is established below which the employee's sick leave record is automatically considered unsatisfactory." (**See page 54 for a copy of ELM 513.391.c.**) In addition, the arbitrator found that under

the Transfer MOU, there is an "obligation to conduct further objective inquiry" to see if there are mitigating factors in the case of an employee who has a low sick leave balance. (AIRS #46373)

Arbitrator Williams cited Arbitrator Jacobowski's reasoning in a case where another employee had been denied a transfer to a Dallas facility. The basis for the denial was "unsatisfactory attendance" but the arbitrator indicated that the Postal Service failed to give full consideration to the employee's acceptable attendance during the year preceding the transfer and didn't take into consideration any mitigating circumstances related to his past absences as well as his exceptional work performance record (AIRS #16851).

## OTHER ISSUES

**Dual Standards by Losing/  
Gaining Facilities Rejected**

Some arbitrators have decided that where management at a losing facility applies one standard to judge the performance and attendance of an employee whereas management at the gaining facility applies another standard to deny the transfer request, there is a violation of the National Agreement. In one of the cases, an employee was recommended by her current supervisor for transfer to another facility with a statement that she is “an employee who works hard and is reliable”, and lacks any “live discipline.” However, the employee was denied the transfer by management at the other facility on the basis that she had an unacceptable attendance record. In reviewing the record, the arbitrator noted that for one of two years prior to the transfer, she had only three occasions of unscheduled sick leave totaling 11.75 hours, and in the other year she had two occasions of unscheduled sick leave in the amount of 36.50 total hours. The arbitrator noted that her record showed scheduled sick leave occurrences for those years but scheduled sick leave allowed the postmaster advance notice to locate another part-time flexible employee to work those hours. He also stressed that the supervisor’s evaluation of the employee indicated she was “reliable” and therefore management “was satisfied that her attendance record did not interfere with his utilization of her services” at that facility. Accordingly, he concluded that management failed to afford full consideration to the employee’s record when she applied for a transfer and thus

violated the National Agreement. (AIRS # 44272)

In another award, an arbitrator indicated that denial of an employee’s transfer on the basis of a lack of explanation for his low sick leave balance and because of a comment that he did not “get along’ with management very well” was improper. Arbitrator Fullmer indicated that the evidence didn’t establish that the grievant had incurred any discipline during his ten years at the facility from which he desired to transfer, including any for poor attendance and/or insubordination. He remarked that “[t]he Employer is essentially asking for a dual standard” ... “[o]ne apparently is to be applicable at [the employee’s current worksite] where the Grievant’s attendance was, at least through disciplinary inaction, rated ‘acceptable’ ... [t]he other is to be applicable at [the facility to which he desired to transfer] where the Grievant’s attendance ... was rated by [the postmaster] as ‘unacceptable’ in a transfer setting.” He said that the same considerations applied to the gaining facility’s evaluation that the employee couldn’t get along with supervisors. He concluded, therefore, that since the grievant had an acceptable work record and acceptable attendance record during the ten years he served in his current facility, “[t]here certainly was nothing indicating that any ‘unsatisfactory work records’ were ‘accurately documented’ with the language of [the Transfer Memo].” (AIRS # 33373)



## USPS Noncompliance With Ratios

Arbitrator Levak ruled that transfer requests normally are to be accorded priority over registry hirings and that the ratios set out by the Transfer Memo are merely “minimum standard(s)” and not a cap that can be imposed by management to limit the number of transfer applicants (See AIRS #46374). In order to comply with the memo, therefore, the USPS is required to hire no fewer than the numbers set out in the ratios.

Also see an award by Arbitrator Fletcher in which he determined that management failed to comply with the requirement that at least one out of every four vacancies be filled by reassignments in an office of 100 or more man-years. He cited evidence that following receipt of a grievant’s transfer request for either a clerk or carrier position six employees were hired at the Port Arthur Texas facility to which he sought reassignment. He indicated that three clerk vacancies, and one carrier, one rural carrier and one custodian vacancy were filled by these outside hires at the time the grievant unsuccessfully sought a transfer. (AIRS #18139) Another arbitrator found that where the evidence showed that four employees were hired as MPE Mechanics for the San Juan, Puerto Rico P&DC at the same time an MPE Mechanic sought

to transfer to that facility unsuccessfully, the Postal Service violated the Agreement by not using the “agreed upon four-to-one ratio in filling vacancies.” (AIRS #43860)

In another award, an arbitrator found that though the Postal Service submitted evidence that 16 employees were hired into the maintenance department around the time an employee was denied transfer and six of them were transferees, it didn’t provide actual dates for these transfers in relation to the date the grievant applied for a transfer or show whether the

***Note that reporting requirements set out in Paragraph C of the Transfer Memo make it necessary for the Postal Service to disclose to local unions, upon request on a “semiannual basis,” information necessary to determine if a 1 out of 4 ratio is being met between reassignments and hires from entrance registers in offices of 100 or more man years.***

applicants were “ranked among themselves.” (AIRS # 28578 and AIRS # 28777) Another arbitrator acknowledged that though the Postal Service can place employees in vacancies “first through promotion, internal reassignment

and change to lower level, transfer from other agencies, [and] reinstatements”, management has to comply with paragraph “B” of the Transfer Memo which requires that at least one out of every four for offices of 100 or more man years and one out of every six for offices of less than 100-man years must be reassignments under the Transfer Memo if those employees are qualified. Arbitrator Franklin then found that “the Service, in several facilities in Florida [to] which the grievant had sought a transfer, went to the register before going to the applicants for reassignment.” In one facility the Postal

Service hired a custodian off the street before considering the grievant for transfer there and thus didn't comply with the MOU, according to the arbitrator. (AIRS #19332)

A third award indicates that even if there are local concerns for hiring off of the register, when an employee seeks a transfer, the Postal Service must comply with the minimum prescribed ratio of reassignments for qualified employees in relation to hiring from the street. In this case, however, Arbitrator Torres indicated that such a ratio had been met when the Postal Service denied an employee's transfer request. (AIRS # 12872)

Also, Arbitrator Fullmer rejected an argument by the Postal Service that it complied with the requirements of the Transfer Memo by accepting transfers in one out of three cases in which employees were hired off the street. He determined that management's failure to assert during the grievance procedure or in its opening statement that the postmaster relied upon "local economic and unemployment conditions" or "EEO factors" in making the decision not to grant the grievant's transfer barred it from arguing that its compliance with ratio requirements justified its not granting the grievant a transfer. (AIRS # 33373) Also see AIRS # 22766 for similar reasoning regarding this provision.

Note that reporting requirements set out in Paragraph C of the Transfer Memo make it necessary for the Postal Service to disclose to local unions, upon request on a "semiannual basis," information necessary to determine if a 1 out of 4 ratio is being met between reassignments and hires from entrance registers in offices of 100 or more man years. The national union can obtain access to information on reassignment requests that have been received by all installations on an annual

basis. The statistics to which the union has access cover all nonsupervisory employees whether or not they are covered by the APWU contract.

## **Deliberate Violation Of Transfer MOU**

Finding that a postmaster's statement that no vacancies existed at a facility was belied by evidence that numerous postal workers had been hired from off the street. Arbitrator Howard held that the USPS had willfully and deliberately violated provisions set forth in the transfer memo when it denied a transfer applicant's request. The union was able to prove that positions had been available at the time a request for transfer was made by introducing the seniority roster which showed that numerous new hires had been made to clerk and carrier positions.

The arbitrator also found that a reason alleged for denying the employee a transfer, his attendance record, was totally lacking merit. The attendance record relied upon by the employer was merely based on a record of seven days of absence during a 35-day period when the employee's service with the USPS extended over an eight-year period of time (see AIRS #46381). Proof similar to that offered in this case may influence an arbitrator to award more extensive remedies (See Remedies Section below).

Another arbitrator determined that the Postal Service violated the National Agreement by denying an employee's transfer where she had only three safety incidents that were not her fault and resulted in no injury, she had no attendance problem as evidenced by no live discipline, she had a satisfactory work evaluation, and she had been qualified

on the flat sorter. She stressed that the National Agreement provides that “requests from qualified employees will not be unreasonably denied and sound judgment must be exercised” and that “managers must not deny deserving and qualified employees opportunities for reassignment because of unfounded reservations concerning performance.” (AIRS #29586)

## Remedies in Transfer Cases

Remedies afforded employees who have been denied transfers improperly have included awards of retroactive seniority to the day he or she would have been originally assigned to the position requested or the date another party actually was assigned to the position desired by a grievant (AIRS #9456; AIRS #27308; and AIRS #18139). In addition, an employee has been awarded monetary remedies for the round-trip mileage incurred because of the continuing need to commute to the postal facility from which she was seeking a transfer (\$22.60 per day) for the period of time after she filed a grievance (AIRS #46381).

Another arbitrator ordered that an employee, who was removed due to her LWOP status while waiting to be accepted for transfer, should be made whole for lost benefits and wages from the date her transfer request should have been approved including any accumulated leave time taken in an effort to locate another facility into which she could transfer (AIRS #17134). Arbitrator Suardi ordered that the Postal Service retroactively promote the grievant who sought a transfer to the job into which a new hire was improperly placed and directed also that he be paid all back pay due to the difference in his pay and the other position, as well as

out-of-schedule pay due to differences in the schedules of the two positions (AIRS #44379). A simple remedy due to management’s failure to respond to a request for a transfer in a timely manner, which in this case was approximately four months after discovering the request had been filed without a response, was awarded by another arbitrator. Arbitrator Sickles directed that the Postal Service cease and desist from violating the National Agreement and awarded the grievant a lump sum payment of \$175. (AIRS #36598)

In addition, one arbitrator granted an employee alternative forms of relief:

- To be afforded a prompt opportunity within a period of 90 days to transfer to a position in the office to which he desired a transfer, or;
- To delay the transfer for six months in order that he could have the time to relocate his family back to the city in which they had previously lived and to which he had sought his original transfer (AIRS #46382).

Another circumstance was where an employee was not given consideration for a transfer at the same time a junior employee was allowed to transfer into the desired facility and several months later was converted to a full-time regular position. The grievant’s transfer was subsequently approved but he remained a part-time flexible in the new facility. The arbitrator determined that the grievant should be reimbursed for the difference between pay he previously received, as a full-time regular employee in the position he held before the transfer, from the date of his transfer until the date he would be made a full-time regular. (AIRS #18023) Also, when an employee’s transfer was not completed within 90 days as required by Paragraph E of the Transfer MOU,

an arbitrator ruled that the grievant was entitled to be awarded ninety minutes of overtime for each day he had to travel from his home in Albuquerque, New Mexico to the facility from which he was seeking a transfer (Santa Fe, New Mexico) and mileage reimbursement at the IRS rate for the one and a half year period it took before he was actually transferred to Albuquerque (AIRS #44243). (However, see AIRS # 27748 where an arbitrator denied a union's grievance regarding delays in reassigning transferees which extended beyond the 90-day period set out by the MOU.) Another arbitrator ordered that in addition to granting an employee a transfer, the Postal Service should pay him for missed overtime opportunities or for any out-of-schedule work performed as a result of the contract violation (AIRS #44351). However, see AIRS #46115 where an arbitrator rejected as "speculative" a union's request that a grievant be paid overtime that she would have earned if she had been allowed a transfer. Yet the arbitrator awarded her a make whole remedy for lost wages and benefits she would have earned in the facility to which she desired a transfer (excluding overtime), and a seniority date one month after her initial transfer request (AIRS #46115). Note also that another arbitrator rejected a request for compensation in the amount of \$25 per day for lost annual leave and additional expenses incurred by an employee seeking a transfer (AIRS #46383).

Since the Transfer Memo indicates

***Since the Transfer Memo indicates that relocation and interview expenses "will not be paid" by the Postal Service and "must be borne" by employees, arbitrators for the most part will refuse to order such broad relief.***

that relocation and interview expenses "will not be paid" by the Postal Service and "must be borne" by employees, arbitrators for the most part will refuse to order such broad relief. However, one arbitrator determined that an employee was entitled to a monetary remedy of \$1641.39 due to moving expenses incurred because of the unreasonableness of the Postal Service actions in cancelling the employee's approved transfer. However, he found that some of the expenses incurred by the employee, such as pay for employee labor,

house paint, painting tools, an unused hotel room, one day of annual leave, local mileage to buy paint, for example, were not even paid by the Postal Service

in circumstances involving involuntary reassignments. He also stressed that "[i]n view of the unusual and unique nature of this grievance, [he] specifically rules that this opinion and award are limited to the facts presented herein and shall not be precedent setting." (AIRS #30608) Another arbitrator determined that an employee, who had improperly been denied consideration for a transfer over a four-year period when more than 32 employees were hired, should be awarded a vacancy as soon as possible and be granted a seniority date preceding that held by the sixth employee who was hired into the facility. In addition, the arbitrator ruled that his relocation expenses from Kansas City, Mo. to the St. Thomas, Virgin Island gaining facility be paid to him as if he had been transferred to that facility at the Postal Service's request (AIRS



#16754).

In a settlement at Step 1 of an employee's grievance challenging the Postal Service's denial of his request for transfer based on his safety record and concerns about his mental handicaps, the Postal Service agreed that "[t]he Grievant's request for *any* transfer will be approved" and "all restricted medical information in the possession of the supervisor will be destroyed." However, when the employee sought a transfer to Orlando, Florida, management at the Orlando facility

responded by denying his transfer based upon his accident and attendance records. The arbitrator determined that a reasonable

interpretation of the Transfer MOU requirements is that "it is the head of the receiving installation which is given the discretion as to accepting transfer from other installations." Moreover, he found that "it would have been unlikely that the Grievant and Union would have been placated by an assurance of the strained language that a subsequent transfer [by the grievant] would be 'approved', subject to the 'approval' of the receiving installation." Therefore, the settlement's provision that "any" transfer will be approved doesn't allow the receiving installation to bar a transfer, and the Postal Service failed to comply with the settlement when it did, according to the arbitrator (AIRS #42743).

An arbitrator determined that an employee, who was deprived of consideration of his transfer, would be

awarded a Window Clerk position in the office to which he desired a transfer "within a reasonable time, not to exceed six months from the date of this Award." However, since the employee didn't indicate a willingness to transfer to any position other than a Window Clerk position when he requested the transfer, and there was no evidence such a position existed in the post office to which the employee wanted to transfer at the time he made his request or that such a position was filled during the period of time

management failed to consider his transfer request, the arbitrator declined to award back pay, out-of-schedule pay or retroactive seniority to the grievant (AIRS #31097).

***An arbitrator determined that if a transferee had been placed on the rolls as of the date of his transfer request, he should have been entitled to a Level 5 position ahead of transitional employees who were placed at that level.***

Arbitrator Silver determined that an employee who was awarded a transfer as a result of another arbitration award, should have been placed in a Level 5 Distribution Clerk job rather than the Level 4 Mail Processor position he was awarded when he was transferred. He based his decision on the fact that if he had been placed on the rolls as of the date of his transfer request, he should have been entitled to a Level 5 position ahead of transitional employees who were placed at that level. The arbitrator relied on the EL-311 Handbook, Section 261.12 which prescribed that "general vacancies within an installation must be filled by promoting or reassigning career full-time or part-time employees who are performing satisfactorily, and if qualified employees are not available within the installation qualified applicants from other



postal installations ‘must be considered.’” Note that the EL-311 has been replaced by the EL-312 Handbook which has a similar provision in Section 232. 41. **(See page 50 of this CBR.)** Since the TEs who were placed in the job weren’t career employees, and notwithstanding the fact that the employee didn’t have scheme knowledge, the arbitrator ruled that he should have been placed in that job and should be made whole for the difference between the Level 4 Mail Processor salary level and that of a Level 5 Distribution Clerk from the date of his transfer until he was ultimately granted Level 5 status (AIRS #35168).

Another arbitrator ruled that the Postal Service’s lowering in step placement of an Electronic Technician Level 9 who transferred to another facility as a Custodian Level 3 violated the National Agreement. The arbitrator found that the grievant “was given material information [before the transfer] that was in error by Service management that led him to accept a lower level transfer that he would not have otherwise accepted”, and to believe that he would be paid at Step C of Level 3. Therefore, Arbitrator Fritsch ordered that management take action to correct his erroneous placement in Step B of Level 3 and correct subsequent salary actions that would be affected by this erroneous placement. Also, he ordered that the grievant be paid appropriate back pay for the period in question (AIRS #41569).

### Status of a Transferee

A voluntary transfer under Article 12.6 and the Transfer Memo results in a reduction in status for an employee from a full-time regular to a part-time flexible status. The memo provides at Section G

that employees will not be reassigned to full-time regular positions to the detriment of career part-time flexible employees who are available for conversion at the gaining installation. In addition, it provides that employees will be reassigned consistent with each craft article. These provisions require that an employee start a new period of seniority, and in the case of clerks be placed at the bottom of the PTF roll **(See Articles 37.2.D.6 and 37.2.D.2 & 3.b, 38.3.E, and 39.1.B.3 at pages 55-59 of this CBR).**

Note that a Step 4 settlement in a Maintenance Craft case indicates that occupational group seniority from both a former and new installation could not be used to place a Maintenance Mechanic Level 5, who had transferred, on a PER for an MPE-8 position ahead of other employees who already were on the PER including seven who were MM-5s at the new installation **(See page 60 for a copy of the Step 4 Settlement)**. The APWU and Postal Service agreed that when an employee transfers to a new installation, he or she begins a new period of seniority, except for defined Service Seniority. (Article 38.2.E defines Service Seniority and includes all time in the Maintenance Craft regardless of installation.)

See also AIRS #40721 which states that an employee “who transfers back to her/his original installation within one year of the original transfer does not lose seniority per Article 37.2.D.6 due to the specific language of Article 12.2.E exempting such employees.” **(See page 61 for language of Article 12.2.E.)**

In addition, the number of hours afforded a transferee cannot be guaranteed in advance of a transfer because contractual provisions under Article 7, Section 1.A.2 allow management significant leeway to schedule part-time

employees to less than eight hours a day or 40 hours a week of work (AIRS #500617).

However, despite the change in status of a transferee, the Transfer Memo makes it clear that under no circumstances can an employee be requested to resign from his or her position prior to obtaining a transfer and thus protects an employee against loss of benefits.

## **Lock-In Periods And Return Rights**

With regard to lock-in periods for an employee who transfers, an award makes it clear that the “voluntary release” of an employee by an installation head “excuses the operation of the lock in periods in the transfer MOU.” Citing an NALC award (AIRS #46384), Arbitrator Buckalew said that the award “supports my finding that the purpose of the lock-in period is to work as brake on employee transfers of right but such brakes are not relevant when the installation head supports the transfer outside the lock-in periods.” (AIRS #40721)

The Transfer Memo specifies that exceptions to the 12 or 18-month service requirements in the new facility are when an employee is released earlier by an installation head or requests to return to the installation where he/she previously worked. In the case of reassignments within a geographical area covered by a District or to the geographical area covered by adjacent Districts, the MOU also provides that where an employee can substantially increase the number of hours (8 or more hours per week) by transferring to another installation and the employee meets the other criteria, the lock-in period will be 12 months instead of 18 months.

In an award, Arbitrator Marshall ruled that Article 12.2.E “implicitly indicate[s] that an employee who requests to return to a prior facility within one year of the transfer, be it voluntary or involuntary has retreat rights.” Therefore, he decided that under the Transfer MOU and Article 12.2.E, an employee who requested retreat rights to return to a facility from which he obtained a voluntary transfer was entitled to return to the same “craft and/or installation within one year from the date” he left that facility. He further indicated that the denial of the employee’s transfer back was unreasonable since he had an acceptable work, attendance, and safety record, as well as no disciplinary record at the facility to which he transferred. (AIRS #34794)

## **Procedural and Other Arguments**

### **Re: Receipt of Request**

Several arbitration awards have dealt with the issue of whether a request for transfer has been received by the Postal Service. In a case in which the Postal Service contended that it had not received a written transfer request and therefore properly assigned an available position as a Building Equipment Mechanic (BEM-07) to a new hire, Arbitrator Suardi credited the union’s argument that transfer requests at the Waterloo, Iowa office to which the employee desired to transfer were “unorganized.” He said that “the mere fact a document may not be in a file ‘... is not dispositive of (the) issue’ and that the absence of a letter in a file ‘... does not mean per se that it was not sent.’” He found testimony of the grievant to be credible to the effect that he prepared and hand-delivered the

letter requesting a transfer and frequently asked management if any openings were available or expected at the facility to which he desired to transfer. (AIRS #44379)

**Re: Scope of USPS Acknowledgement**

Another award concerns the scope of the Postal Service’s obligation under Article 12.6 in acknowledging a transfer request. The arbitrator indicated that management’s written acknowledgement of a grievant’s application for transfer without any indication as to why he had not been selected for the position “technically satisfied the requirements of Article 12.6.” “While an acknowledgement including an indication as to why he had not been selected for the position would have been a more thorough response under Article 12.6, Management’s contention that [it’s representative’s] acknowledgement ... of the grievant’s application for transfer/ downgrade to the maintenance craft does satisfy the ... contract regulations.” (AIRS # 33800)

**Re: Reporting Date Requirements**

In other sections of the Transfer Memo, there is a requirement that no less than 30 days notice be afforded to a losing installation before a transfer is allowed to occur; however, losing installations are prevented from delaying the process beyond 90 days. If the Postal Service deviates from these requirements they may be subject to penalties imposed by arbitrators. For instance, the Postal Service’s failure to notify employees that a reporting date had been vetoed by their own postmaster was deemed sufficient grounds for reinstating annual leave that

the employees had used in anticipation of moving on the earlier date (AIRS #46385). See also Remedies Section above for additional citations on this issue.

**Re: Losing Facility’s Authority To Settle Grievance**

Additional arguments can be made to support a grievance over a transfer denial. One such argument is that a management designee in the grievance procedure lacked authority to settle the grievance. In one case, a union steward as well as the Service’s Step 1 representative testified that management’s representative was unable to approve transfers. Arbitrator King stressed that the Postal Service has a responsibility under Article 15 of the grievance procedure to assure that its designees have authority to settle a grievance and are aware they have such authority. He concluded that in view of evidence to the contrary in this case, the grievance must be sustained. (AIRS #36538) Also see AIRS # 20845 in which Arbitrator Gold noted that it was inappropriate for a postmaster in a losing facility to deny a grievance on the basis that she lacked control over the policy of the gaining facility that rejected an employee’s transfer. The arbitrator stressed that “[a]ny employee filing a grievance in one location that has an impact on another location has the right to expect that his or her grievance can be resolved.” In addition, she cited Arbitrator Martin’s reasoning in AIRS #19236 that “the Postal Service is a single entity employer.” Also see AIRS #34794 in which Arbitrator Marshall ruled that the Postal Service’s designees at a losing facility have authority under the National Agreement to settle a grievance despite

the fact that a potential gaining facility was not in favor of an employee's transfer.

## **Re: Stale Discipline**

Another award overturned the Postal Service's denial of an employee's transfer request, which cited three suspensions for tardiness in the grievant's Official Personnel Folder. The arbitrator found that the discipline cited was more than seven years old and should have been removed from the grievant's OPF after two years. She ruled that the Postal Service therefore did not "give 'full consideration' to the grievant's request for reassignment or to fairly evaluate his past record." (AIRS #17073) Also see AIRS #46373.

## **Re: Arbitrability**

Though the preferable course of action is to file a grievance within 14 days from the date a transfer request is denied or soon after learning that an unreasonable delay has occurred since the time an employee's request was filed, there may be instances in which the union lacks sufficient knowledge that a violation exists due to having inadequate information. In one such case, an arbitrator determined that a local union's grievance challenging the Postal Service's delay in reassigning an employee was arbitrable despite management's argument that it wasn't filed until a year after the employee was reassigned. The evidence showed that the employee contacted the union immediately following his reassignment to determine whether his contractual rights had been violated and the union initiated requests for information regarding the maintenance department and its staffing in San Juan, Puerto Rico.

However, the Postal Service refused to provide the information and the union had to file unfair labor practice charges with the National Labor Relations Board which finally were settled by the parties. The union thereafter filed its grievance. Arbitrator Thomas determined that Article 15.1 "precludes the filing of grievances based on suspicion and supposition" and "[k]nowledge of the basis of a grievance involving interpretation, application or compliance is understandably required." She stressed that there were so many variables for which information was necessary before this grievance could be filed, such as "the actual number of maintenance mechanic vacancies available; the number of individuals hired, promoted, reassigned, transferred, or reinstated into available vacancies, when these positions were filled, the number of reassignments requested, whether local economic, unemployment conditions and EEO factors are valid concerns, and the existence of 'unusual circumstances' among others." Also, "[h]olding that a grievance should be filed on the basis of guesswork leads to an overburdened grievance procedure," according to the arbitrator (AIRS #43860)



## Mutual Exchanges or Trades

An alternative to transferring under the Transfer Memo is by a mutual trade which involves changing places with another employee who has advertised that he or she desires to exchange positions. Mutual exchanges are governed by Section 351.6 of the Employee and Labor Relations Manual which states that:

*.61 General Policy. Career employees may exchange positions (subject to the provisions of the appropriate collective bargaining agreement) if the officials in charge at the installations involved approve the exchange of positions. Mutual exchanges must be made between employees in positions at the same grade levels. The following employees are not permitted to exchange positions:*

- a. Part-time flexible employees with full-time employees.*
- b. Bargaining employees with nonbargaining employees.*
- c. Nonsupervisory employees with supervisory employees.*

The advantage of exchanging positions via a mutual trade is that a full-time regular transferee can retain full-time regular status and all transferees retain some seniority, i.e. that of the junior trading employee.

The craft articles that cover seniority in the event of a mutual exchange are Articles 37.2.D.7, 38.3.I, and 39.1.B.12 **(See pages 42 to 44).**

APWU members may place and view ads of other members seeking mutual trades on Crossroads which is located on APWU's website.

In an award in which an employee's request for a mutual trade was denied, Arbitrator Cannavo indicated that the ELM

(and the EL-311 Handbook) require that: "1) the exchange of positions must be approved by the officials in charge at the installations involved; 2) mutual exchanges must be made between employees in positions at the same grade levels; and 3) mutual exchanges of positions does not necessarily mean that the employees involved take over the duty assignments of the positions." (Note that the EL-311 Handbook has been replaced by the EL-312 Handbook.) In this case, the arbitrator noted that both employees were at the same grade level and it was irrelevant that one was a window clerk and the other an FSM operator since "there does not necessarily have to be a mutual take over of duty assignments." In addition, he found the argument that the Postal Service wasn't to consider the request since one of the two parties involved in the mutual trade didn't submit a written request, lacked merit. He noted that management was well aware that both employees desired the trade. Moreover, Arbitrator Cannavo rejected the basis for management's denial of the trade, that there were no clerk openings in the Flushing area and that the facility was at complement and was suspending hiring and reassignments. He found that the Postal Service would not be creating a position but rather replacing one employee with another. Also, according to the arbitrator, even if the grievant transferred to the other facility, Flushing management would have to post his position for bid and train a successful bidder.

Citing another award, he further ruled that though mutual exchanges are discretionary, "that discretion should not be abused" and "absent criteria ... to which consideration of mutual exchanges would be subject, fairness dictates that the Employer's rejection of



the grievant's request be appraised using a 'due consideration' yardstick." Also, "where a 'due consideration' provision is at issue, management's determination must stand unless the Union can prove that the determination was arbitrary and capricious or made in bad faith." Accordingly, Arbitrator Cannavo concluded that the appropriate criteria for determining whether "due consideration" has been given to a mutual exchange request is to apply criteria including attendance, discipline, and safety record. "For the Postal Service to give 'due consideration'

to a criteria that is not relevant to the success of a mutual exchange is, in fact, an abuse of discretion," he stressed. "Once it is determined that the requesting employees are at the same grade level; and once it is determined

that they are qualified and have good work records," according to the arbitrator, "the mutual exchange should be effectuated" which was not done in this case. Instead, the Flushing postmaster relied on "unacceptable and irrelevant criteria ... to deprive these two employees from having a mutual exchange" which constituted an abuse of discretion.

Arbitrator Cannavo further rejected the argument that no remedy was available in this case since one of the employees seeking the mutual exchange had resigned. "For the Postal Service to rely on this fact in arguing that there is no remedy available to the Grievant

because there is no one to swap with would permit the Postal Service to 'eat the fruit of the forbidden tree'" ... since it prevented the mutual exchange in the first place, according to the arbitrator. He thus ordered that management transfer the grievant to the appropriate full-time position in the Hartford Connecticut area with the seniority he would have had but for the improper denial of his request for a mutual swap. (AIRS #42856)

In another case, an arbitrator decided that management's denial of a mutual exchange, on the basis that the

postmaster deemed it necessary to preserve vacancies for employees who would be excessed, was improper. He found that this "blanket rejection of consideration of mutual exchanges" ... "in the absence

***An arbitrator found that a "blanket rejection of consideration of mutual exchange" ... "in the absence of some understandable and reasonable explanation, appears contrary to the implicit right of career employees under Section 512.4 [of the EL-311 Handbook] to be considered for mutual exchanges."***

of some understandable and reasonable explanation, appears contrary to the implicit right of career employees under Section 512.4 [of the EL-311 Handbook] to be considered for mutual exchanges." Note that the EL-311 has been replaced by the EL-312 Handbook which has a similar provision in Section 717.1.c. (**See page 62**). He also determined that "the consideration standards set out in Article 12 and the MOU relative to transfers are applicable to mutual exchanges." Therefore, since there was no consideration of the employee's request for a mutual exchange, he sustained the union's grievance. (AIRS #46386)

However, in several older NALC awards, arbitrators have upheld management's decision to reject mutual exchanges. In one case, three employees wanted to engage in a mutual exchange; i.e., one employee desired a transfer to Austin from Tucson, another employee desired to transfer from Austin to San Diego, and a third employee wanted to transfer from San Diego to Tucson. The three-way mutual exchange was denied by Tucson management on the basis that its budgetary restraints placed it under a complement cap and it would not be replacing losses. The union argued that the postmaster's denial based on budgetary constraints amounted to a "blanket policy" in violation of the Memorandum of Understanding on Transfers that requires installation heads to afford full consideration to all reassignment requests. At the hearing, the Postal Service introduced into evidence minutes from national level negotiations on the issue of transfers. Arbitrator Levak found that the parties "were concerned only with transfer requests made at the time an office is in a hiring mode, and were aimed at making certain that prior to hiring from entrance registers installation heads would give full consideration to transfer requests." He then concluded that this situation does not involve Article 12.6 of the Memorandum of Understanding on Transfers since the MOU is concerned solely with "those situations where an installation is in a hiring mode" and at "no time was the Tucson office in a hiring mode ...." He indicated, however, that under the craft and ELM provisions on mutual exchanges, the requirement is that "due consideration" be given to such requests. Since management set forth valid Article 3 economic reasons for denying mutual exchanges during its

hiring freeze, he said, its action cannot be considered arbitrary and capricious (AIRS #46387). In a second award, an arbitrator also determined that the MOU on Transfers does not apply to mutual exchanges and criteria was absent in the ELM regarding such trades. He ruled that denial of the employee's request was proper where hiring at the facility to which the employee desired a transfer was being done only in the case of attrition. (AIRS #46388)

In another award, an arbitrator ruled that the denial of a mutual exchange on the basis of an employee's record of four accidents constituted a violation of the National Agreement. She determined that the grievant was only acting in compliance with the mandates of the Postal Service to report accidents, he was never disciplined for any of the accidents, and only received medical attention in the case of one where he incurred wasp stings. She found that the "sole reason for the denial of the Grievant's request for the mutual transfer was the number of reported accidents on his record" based in part on testimony of a manager that when a carrier has three accidents, whether or not at fault, he or she is considered to be "a person susceptible to being involved in accidents." Citing in part ELM Section 819, which states that "[e]valuations must not be based solely on the number ... of ... accidents, but also on how effectively the opportunity for accidents to occur was reduced," Arbitrator Lalka found the denial of the transfer violated the Agreement. (AIRS #46383) **See page 63 for a copy of ELM Section 819.**

## **Article 12.6**

### **Section 6. Transfers**

A. Installation heads will consider requests for transfers submitted by employees from other installations.

B. Providing a written request for a voluntary transfer has been submitted, a written acknowledgment shall be given in a timely manner.

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

**Re: Transfers**

The parties agree that the following procedures will be followed when career Postal employees request reassignment from one Postal installation to another.

**Reassignments (Transfers)**

A. Installation heads may continue to fill authorized vacancies first through promotion, internal reassignment and change to lower level, transfer from other agencies, reinstatements, etc., consistent with existing regulations and applicable provisions of the National Agreement.

B. Installation heads will afford full consideration to all reassignment requests from employees in other geographical areas within the Postal Service. The requests will be considered in the order received consistent with the vacancies being filled and type of positions requested. Such requests from qualified employees, consistent with the provisions of this memorandum, will not be unreasonably denied. Local economic and unemployment conditions, as well as EEO factors, are valid concerns. When hiring from entrance registers is justified based on these local conditions, an attempt should be made to fill vacancies from both sources. Except in the most unusual of circumstances, if there are sufficient qualified applicants for reassignment at least one out of every four vacancies will be filled by granting requests for reassignment in all offices of 100 or more man-years if sufficient requests from qualified applicants have been received. In offices of less than 100



man-years a cumulative ratio of 1 out of 6 for the duration of the National Agreement will apply.

C. Districts will maintain a record of the requests for reassignment received in the offices within their area of responsibility. This record may be reviewed by the Union on an annual basis upon request. Additionally, on a semiannual basis local Unions may request information necessary to determine if a 1 out of 4 ratio is being met between reassignments and hires from the entrance registers in all offices of 100 or more man-years.

D. Managers will give full consideration to the work, attendance, and safety records of all employees who are considered for reassignment. An employee must have an acceptable work, attendance, and safety record and meet the minimum qualifications for all positions to which they request reassignment. Both the gaining and losing installation head must be fair in their evaluations. Evaluations must be valid and to the point, with unsatisfactory work records accurately documented.

1. For reassignments within the geographical area covered by a District or to the geographical area covered by adjacent Districts, the following applies: An employee must have at least eighteen months of service in their present installation prior to requesting reassignment to another installation. Employees reassigned to installations under the provisions of this memorandum must remain in the new installation for a period of eighteen months, unless released by the installation head earlier, before being eligible to be considered for reassignment again, with the following exceptions: 1.) in the case of an employee who requests to return to the installation where he/she previously worked; 2.) where an employee can substantially increase the number of hours (8 or more hours per week) by transferring to another installation



and the employee meets the other criteria, in which case the lock-in period will be 12 months. Employees serving under craft lock-in periods per the provisions of the National Agreement must satisfy those lock-ins prior to being reassigned to other installations. These transfers are included in the 1 out of 4 ratio.

2. For all other reassignments, the following applies: An employee must have at least one-year of service in their present installation prior to requesting reassignment to another installation. Employees reassigned to installations under the provisions of this memorandum must remain in the new installation for a period of one year, unless released by the installation head earlier, before being eligible to be considered for reassignment again, except in the case of an employee who requests to return to the installation where he/she previously worked. Employees serving under craft lock-in periods per the provisions of the National Agreement must satisfy those lock-ins prior to being reassigned to other installations.

E. Installation heads in the gaining installation will contact the installation head of the losing installation and arrange for mutually agreeable reassignment and reporting dates. A minimum of thirty days notice to the losing office will be afforded. Except in the event of unusual circumstances at the losing installations, reasonable time will be provided to allow the installation time to fill vacancies, however, this time should not exceed ninety days.

F. Reassignments granted to a position in the same grade will be at the same grade and step. Step increase anniversaries will be maintained. Where voluntary reassignments are to a position at a lower level, employees will be assigned to the step in the lower grade consistent with Part 420 of the Employee and Labor Relations Manual.

G. Employees reassigned under these provisions will be reassigned consistent with the provisions of the appropriate craft article contained in the National Agreement. Employees will not be reassigned to full-time regular positions to the detriment of career part-time flexible employees who are available for conversion at the gaining installation. Seniority for employees transferred per this memorandum will be established consistent with the provisions of the National Agreement.

H. Relocation expenses will not be paid by the Postal Service incident to voluntary reassignment. Such expenses, as well as any resulting interview expenses, must be borne by employees.

I. Under no circumstances will employees be requested or required to resign, and then be reinstated in order to circumvent these pay provisions, or to provide for an additional probationary period.

\* \* \*

ELM 18, June 2007

Employment and Placement  
Assignment, Reassignment, and Promotion

351.6 **Mutual Exchanges**

351.61 **General Policy**

Career employees may exchange positions (subject to the provisions of the appropriate collective bargaining agreement) if the officials in charge at the installations involved approve the exchange of positions. Mutual exchanges must be made between employees in positions at the same grade levels. The following employees are not permitted to exchange positions:

- a. Part-time flexible employees with full-time employees.
- b. Bargaining employees with nonbargaining employees.
- c. Nonsupervisory employees with supervisory employees.

## Article 37.2.D.7

### 7. **Change in Which Seniority is Modified**

When mutual exchanges are made between Clerk Craft employees **in the same status** in different installations, both of the exchanging employees shall take the seniority date **or relative standing on the part-time flexible roll** of the junior employee involved and shall be reassigned as unassigned full-time **regular, part-time regular or part-time flexible** employees **based on existing status.**

**Article 38.3.I**

**I. Change in Which Seniority is Modified**

The seniority for Maintenance Craft employees who are reassigned between installations as the result of a mutual exchange in accordance with applicable provisions of the Employee and Labor Relations Manual will be established for both employees as that of the junior employee involved.



## Article 39.1.B.12

- 12. Changes in Which Seniority is Modified.** Mutual exchanges may be made only between full-time Motor Vehicle Service employees who are the same level and have the same occupational code. The seniority for Motor Vehicle Craft employees, who are reassigned between installations as a result of a mutual exchange in accordance with applicable provisions of the Employee and Labor Relations Manual (ELM), will be established for both employees as that of the junior employee involved.

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

**RE: Transfer Opportunities to Minimize Excessing**

Pursuant to the Memorandum of Understanding (MOU) on Transfer Opportunities to Minimize Excessing dated September 12, 2005, the parties held a series of meetings to discuss the methods by which this understanding would be implemented. As a result of these meetings the parties agree to the following:

1. All APWU employees in the installation and affected craft experiencing excessing from the craft or installation may voluntarily submit a request for transfer through eReassign. These employees will be placed on a preferred listing within eReassign by date order. These volunteers will be allowed to transfer out of their impacted installation in accordance with the MOU on Transfer Opportunities to Minimize Excessing and the procedures described herein.
  - A. Affected employees requesting transfer must meet the minimum qualifications for the position being considered.
  - B. In accordance with applicable provisions of the EL-312 Handbook, nepotism rules are still in effect.
  - C. The following sections of the Transfer Memorandum of Understanding (page 305, of the 2000-2006 National Agreement) are modified in

order to accommodate transfer opportunities to minimize excessing. Specifically:

1. Section B & C (page 305-306) - Ratios contained in the Transfer MOU are not applicable to affected employees applying for transfer as a result of impending excessing.
  2. Section D (page 306) - Affected employees work, attendance and safety records will not be considered when applying for transfer as a result of impending excessing.
  3. Section D.1 (page 306-307) - Affected employees will not be required to have 18 or 12 months of service (as applicable) in their present installation prior to requesting a transfer to another installation. Additionally, any craft lock in period will also not apply to affected employees that qualify for priority consideration.
  4. Section E (page 307) - A minimum of 30 days notice to the losing installation will be afforded if possible. Neither the gaining nor losing installation can place a hold on the employee. The affected employee will be allowed to transfer prior to the excessing if they desire and choose their effective date of transfer will coincide with the start of a pay period at the gaining installation. The losing installation will coordinate between the employee and the gaining installation.
- D. The Postal Service will not provide affected employees copies of vacancies at postal facilities in advance of transfer requests. Installations with

hard-to-fill vacancies post them in eReassign as Reassignment Opportunities.


Employees can request reassignment to these specific positions. It is the responsibility of the affected employee to check on a regular basis in eReassign for Reassignment Opportunities. Employees may also request transfers to offices that do not have reassignment opportunities listed on eReassign.


2. Selections by installations accepting transfer requests will be on a seniority basis using craft installation seniority from the losing installation.
  - A. In the event of a seniority tie, the tie breaker method will be as follows: a). total career postal time, and b). entered on duty date.
  - B. An employee's seniority in the gaining installation is established by the respective gaining craft article in the collective bargaining agreement based on the employee being a voluntary transfer (not excessed) employee.
3. An employee accepting a transfer under the priority consideration will have their name removed from the priority eReassign pending request list at all locations. Affected employees requesting transfer can change their mind and decline a transfer opportunity. By doing so, the affected employee's name will be removed from the priority eReassign pending request list at the declined location and the affected employee becomes immediately available for involuntary Article 12 reassignment.
4. Employees may transfer across APWU craft lines. Transfers outside craft lines will be processed in



accordance with applicable provisions of the collective bargaining agreements and postal regulations. Affected employees requesting transfer must meet the minimum qualifications for the position being considered. The first selection will come from same craft to same craft prior to making cross craft selections. There is no priority consideration to non-APWU craft positions.

5. Simultaneous (duplicate) requests for transfer by the same employee to the same craft and installation in eReassign are not permitted.
6. Employee may receive a printed confirmation of their request through eReassign.
7. Impacted crafts or occupational groups in installations under Article 12 withholding are not available for transfer requests.
8. As a result of the MOU, there are no changes to the Article 12 time frames for notification to the union.
9. Disputes arising from the application of Transfer Opportunities to Minimize Excessing MOU will be processed at the Area level. If unable to resolve at Area level the dispute will be forwarded to the Headquarters level.

  
\_\_\_\_\_  
John W. Dockins  
Manager  
Contract Administration (APWU)

  
\_\_\_\_\_  
William Burrus  
President  
American Postal Workers Union,  
AFL-CIO

Date: 8-8-06



**Article 39.1.G**

**G. Transfer From Other Installation**

1. When it is proposed to open a new facility, prior to Management hiring new employees in the Motor Vehicle Craft, all requests for transfer of Motor Vehicle Craft employees from other installations shall be given first consideration.
2. Consideration will be given for transfers to fill Motor Vehicle Craft vacancies at established installations to those qualified employees requesting transfers, where it has been determined, that no employees qualified to bid, or desiring the position are available at the completion of the posting period.

232.4 **Internal Recruitment and Placement**

232.41 **General Provisions**

Most career vacancies within a postal installation are filled internally by reassignment, promotion, or a change to lower level of qualified career employees who are designated the successful bidders or applicants. Persons in permanent rehabilitation positions have the same rights to pursue promotional and advancement opportunities as other employees. When positions cannot be filled by employees who are on the rolls of the installation with the vacancy, secondary consideration must be given to qualified career applicants from other installations within an expanded geographic area subject to appropriate collective bargaining agreement provisions.



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

August 27, 1993

MEMORANDUM FOR AREA MANAGERS  
PROCESSING AND DISTRIBUTION  
CUSTOMER SERVICE AND SALES

SUBJECT: EMPLOYEE REQUESTS FOR TRANSFER

From time to time, we receive letters from employees (primarily craft) stating that their requests to transfer from one facility to another have been turned down for what they believe are inappropriate reasons. Specifically, many assert that because of a low sick leave balance and for no other apparent reason that their request for transfer was denied.

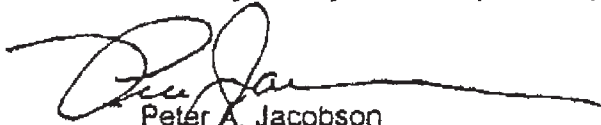
While we understand that attendance is extremely important to all of our operations, the use of sick leave balance per se as a sole determining factor is inappropriate. This is especially true in those situations where sick leave was used for a one time "serious illness" and other than that attendance was more than satisfactory. Where an employee requests a transfer, the responsible official at the gaining installation needs to look at the qualifications of the "whole" individual. By this we mean that we need to determine whether the individual possesses the necessary job experiences and other qualifications to fill the needs of the vacancy. We would also strongly suggest that where there are one or two questions with regard to the viability of the employee for the position, i.e., such as a low sick leave balance, that it is incumbent upon responsible management to obtain additional information into that situation. For example, if a low sick leave balance is indeed a concern then inquiry should be made as to the pattern of use and determine at that point whether there is a possible attendance problem.

We believe that if we do a better job of trying to accommodate employees' needs to relocate to other facilities we, along with our customers, will benefit from enhanced employee commitment. Regardless of the eventual outcome, i.e., whether we accept or deny the transfer or put it in the pending file subject to the availability of a suitable vacancy, we need to advise the employee applying for a transfer as to the status of their request. Further, we need to coordinate the effective transfer date of an employee with the installations involved to ensure that there is a smooth transition and that our ability to effectively serve our customer is maintained during this period.

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Please share this memorandum with all of our Plant Managers and District Managers.

Thank you very much for your cooperation in this matter.



Peter A. Jacobson  
Senior Vice President  
Processing and Distribution



Samuel Green, Jr.  
Senior Vice President  
Customer Service and Sales

cc: Joe Caraveo  
Joe Mahon  
Bill Henderson

Handbook EL-312, September 2001  
Updated With Postal Bulletin Revisions Through October 25, 2007

513.3 **Relatives**

513.31 **Policy**

Postal managers and other nonbargaining employees may not be involved in or interfere in any way with the selection of their relatives to postal positions. They cannot recommend the hiring, employment, or promotion of a relative, or interfere with the selection process in any way that may benefit a relative, or show any expression of interest that may be construed as an impropriety. Postal managers may not hire, employ, assign, or promote to vacancies under their direct jurisdiction, a relative, or a relative of any nonbargaining employee, if the relative was improperly recommended to the manager in violation of these regulations.

The attempt by any postal manager or nonbargaining employee to recommend, influence, or express interest that may be construed as influence in the appointment or promotion of a relative, is prohibited. To protect public and employee confidence in the integrity of postal selection procedures, appointing and approving officials must contemplate whether the appointment or promotion of a relative is likely to create the appearance of impropriety in the eyes of the public and other postal employees. If so, an alternate selection should be made.



ELM 18, June 2007

513.39 **Restricted Sick Leave**

513.391 **Reasons for Restriction**

\* \* \*

- c. Review of the absences during the past quarter of LWOP and sick leave used by employees. (No minimum sick leave balance is established below which the employee's sick leave record is automatically considered unsatisfactory.)

**Article 37.2.D.6**

**6. Changes in Which Seniority is Lost**

Except as specifically provided elsewhere in this Agreement, a full-time employee or a part-time regular employee begins a new period of seniority:

- a. When the change is:
  - (1) from one postal installation to another at the employee's request.
  - (2) from another craft to the Clerk Craft (voluntarily or involuntarily).
- b. Upon reinstatement or reemployment.
- c. Upon transfer into the Postal Service.

## **Article 37.2.D.2**

### **2. Reassignment of Part-Time Flexible Employees to the Clerk Craft**

When a part-time flexible employee is voluntarily or involuntarily reassigned to the Clerk Craft from another craft, the employee shall be assigned to the bottom of the part-time flexible roll and begin a new period of seniority effective the date of reassignment.

**Article 37.2.D.3**

**3. Relative Standing on the Part-Time Flexible Roll**

\* \* \*

- b. A reinstated, reassigned, or transferred employee shall be placed on the part-time flexible roll ahead of one appointed from the register on the same day.

## Article 38.3.E

### E. Loss of Seniority

1. Employees who change from one craft to another shall begin a new period of seniority for preferred assignment.
2. Change from one postal installation to another; except as specified under F and I below, will require the start of a new period of seniority for preferred assignment.



**Article 39.1.B.3**

**B. Seniority for Preferred Assignments**

\* \* \*

3. Except as specifically provided for elsewhere in this Agreement, full-time regulars, upon entering the Motor Vehicle Craft from another craft or installation, begin a new period of seniority.

Mr. Steven G. Raymer  
Director, Maintenance Division  
American Postal Workers Union,  
AFL-CIO  
1300 L Street, NW  
Washington, DC 20005-4128

RE: Q00T-4Q-C05118729  
APWU  
Class Action  
Washington, DC 20260-9998

Dear Mr. Raymer:

Recently, we met to discuss the above captioned grievance at the fourth step of our contractual grievance procedure.

The issue concerns case Q00T-4Q-C05118729, which the APWU initiated as a Step 4 dispute on June 15, 2005. The issue in the case is whether it was appropriate to use occupational group seniority accrued at the Curseen Morris Processing and Distribution Center for a Maintenance Mechanic Level 5 (MM-5) for placement on the Promotion Eligibility Register (PER) for MPE-8 upon his transfer to the Baltimore, Maryland Processing and Distribution Center.

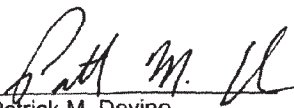
After reviewing this matter the parties mutually agree that when an employee transfers to a new installation, the employee begins a new period of seniority, except for the defined Service Seniority.

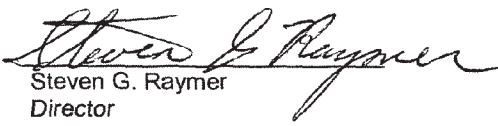
Accordingly, the parties agree to remand case Q00T-4Q-C05118729 to the parties at Step 3 for further processing, including arbitration if appropriate based on fact circumstances and application of the above understanding.

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

Time limits at Step 4 were extended by mutual consent.

Sincerely,

  
Patrick M. Devine  
Labor Relations Specialist  
Contract Administration (APWU)

  
Steven G. Raymer  
Director  
Maintenance Division  
American Postal Workers Union,  
AFL-CIO

Date: 4/13/06

**Article 12.2.E**

E. Except as provided in the Motor Vehicle craft, an employee who left the craft and/or installation and returns to the same craft and/or installation will begin a new period of seniority unless the employee returns within 1 year from the date the employee left the craft and/or installation.

## 717.1 Reassignment

\* \* \*

- c. *Mutual Exchanges.* Career bargaining employees may exchange positions at the same level if the exchange is approved by management at the installations involved, subject to the provisions of the applicable collective bargaining agreement. An exchange of positions does not necessarily mean that the employees involved take over the duty assignments of the positions.

**Exclusions:** Part-time flexible employees may not exchange positions with full-time employees, or bargaining employees with nonbargaining employees, or nonsupervisory employees with supervisory employees.

ELM 18, June 2007

819 **Accountability for Safety and Health Performance, Compliance, and Evaluations**

In any evaluation of individual performance or potential, provision must be made to include the achievement or failure of managers, supervisors, or employees in the performance of their safety and health responsibilities, including OSHA compliance. Evaluations must not be based solely on the number and seriousness of accidents, injuries, and illnesses experienced but also on how effectively the safety and health program has been implemented and supported.



# CBR

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Industrial Relations Department  
American Postal Workers Union  
1300 L Street N.W.  
Washington, D.C. 20005

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