We Can't W8

A 21st Century Contest of the Working Day

"We Can't W8" (to be read: we can't wait) is an effort to demonstrate one form of dual analysis that *Rank and Fowl* seeks to offer: on the one hand, particular to the union in which the author works; and on the other hand, generally applicable (with whatever necessary modifications) to a politics of labor. In this case, the topic is the work day and the work week as viewed particularly through the eyes of a member of the National Association of Letter Carriers (NALC); and more generally in light of the political economic history of the work day and the history of the 8-hour day as a standard. Given that the latter half of the proposition has already caused delays in the composition of this piece, this piece will be divided into at least two parts (… **at least**). First, then, let us deal with the work day and work week as they relate to letter carriers with gestures at the more general implications of some of the things that arise when one compares the language of the NALC's contract with the actual day-to-day experience of those who work under said contract.

Part 1

In order to properly understand the contractual language around letter carriers' work days (the elusive 8) and work week, one must understand a bit about the various letter carrier designations. There are any number of designations depending on whether a letter carrier is a career or non-career employee. In terms of non-career carriers we have: City Carrier Assistants (CCAs). In terms of career carriers, we have: Part-Time Flexible Carriers (PTFs), Part-Time Regular Carriers (PTRs), and Full-Time Regular Carriers (FTRs). Career and non-career employees have more contractual distinctions than will fit within the word count of this article so for now we will focus only on those that pertain to overtime. Too, for the sake of keeping this brief and temporally accessible for working people, I will not be citing from different handbooks, manuals, and contracts directly; rather, I will paraphrase.

When one looks at the language regulating carriers' work days, one finds that far more of the language is geared around upper rather than lower limits. In other words, the fixation is on the maximum hours that a carrier can work in a day rather than the least hours (also known as guaranteed hours) that a carrier can work in a day. The distinction is important because, as alluded to earlier, the least hours is also least likely to occur. (Management also tends to exceed the maximum hours, but we'll get to that in a moment.) Okay, now we'll get on to the specifics! Thank you for your patience!

For the sake of understanding CCA's guaranteed hours, however much can be found here, we get our understanding of work years from a 1974 agreement, known as the "Bridge Memo," agreed to by the NALC, the American Postal Workers Union (APWU), and the National Postal Mail Handlers Union (NPMHU). The agreement establishes that a post office or facility's work years are calculated by taking the sum of total paid work hours and total paid leave hours for employees covered by the NALC, APWU, and NPMHU in the year preceding the close of the most recently expired contract. After calculating that sum, one divides that total by 2,080 and the quotient of this math is a post office or facility's work years (APWU, "Work Year List").

Per the National Agreement, CCAs are guaranteed a different number of hours depending on the size of the post office or facility that they work in. Per article 8.8.D of the National Agreement, a CCA working in a post office or facility with 200 or more work years of employment is guaranteed 4 hours of work or pay equal to 4 hours of work for any day that they are scheduled to work. A CCA working in a post office or facility with less than 200 workyears is only guaranteed 2 hours of work or pay equal to 2 hours. When one talks about CCA's maximum hours in a day, one needs to look at the Employee and Labor Relations Manual (ELM), specifically Section 432.32. Section 432.32 explains the general maximum hours that any United States Postal Service employee can work in a day with the exception of Postmasters and expressly exempt employees. Per Section 432.32, no employee may be required to work more than 12 hours in a 1 service day. Additionally, said employee may not be required to work those hours—inclusive of scheduled work hours, overtime, and meal time—over more than 12 consecutive hours. There are two exceptions to this rule: 1. in an emergency situation as designated by the Postmaster General or a designee; or 2. as designated in a labor agreement for bargaining unit employees. CCAs are not covered by Article 8.5.F nor 8.5.G because these articles only cover FTRs, so CCAs do not meet the criteria for the labor agreement exception of Section 432.32. In short, the minimum hours for a CCA: 2 or 4 hours depending on the work years in their post office or facility. The ELM does not specify a minimum nor maximum amount of hours for a CCA to work in a week; further, the National Agreement does not provide for a minimum weekly schedule for CCAs. If a CCA in a 200 work year (or more) post office or facility worked 7 days in a week at 11.5 paid hours (scheduled and overtime) then their maximum would be 80.5 hours and their minimum at 4 hours would be 28 hours. If a CCA in a post office or facility with less than 200 worked 7 days in a week at 11.5 paid hours (scheduled and overtime) then their maximum would be 80.5 hours and their minimum at 2 hours would be 14 hours.

On to PTFs. PTFs, similar to CCAs, are not covered by Article 8.5.F nor 8.5.G, meaning that PTFs max hours are covered by Section 432.32 just the same. PTFs, however, have both daily and weekly guaranteed hours. Article 8.3 suggests that PTFs should be scheduled in accordance with Article 8.2 with the exception that PTFs may work less than 8 hours in a service day and less than 40 hours in a week. Accounting for the exceptions, PTFs are still eligible for a minimum of 5 service days in a service week as is set forth in Article 8.2. Though not guaranteed 8 hours, Article 8.8.D PTFs are still guaranteed 4 hours on scheduled service days or pay equal to 4 hours subject to the same work year minimums as CCAs. Implicitly, PTFs are normally guaranteed 10 hours (5 services days x 2 guaranteed hours) or 20 hours (5 service days x 4 guaranteed hours) in a service week. The language of normalcy suggests that in some instances, PTFs will not have 5 service days in a service week. Too, as with CCAs, neither the ELM nor the National Agreement provides for a weekly maximum for PTFs. The maximum and minimum would follow the same formula as with CCAs. If 200 years or more and working 7 days in a service week: maximum of 80.5 and minimum 28. If less than 200 work years and working 7 days in a service week: maximum of 80.5 and minimum of 14 hours.

We can only briefly outline the work hour standards for PTRs because Article 8.1 allows for shorter work weeks than those of FTR employees. Article 8.5.F and Article 8.5.G do not apply to PTRs, but PTRs are eligible for guaranteed time based on the same +/- 200 work year calculations as CCAs and PTFs.

Now, we will deal with FTRs. As a baseline, per Article 8.1, FTRs will have a schedule consistent of 5 service days in a service week at 8 hours per service day for a minimum total of 40 work hours per service week. Given that Articles 8.5.F and 8.5.G *do* apply to FTRs, FTRs are excepted from Section 432.32 of the ELM and the maximums become a bit more tricky to work out. In addition to Articles 8.5.F and 8.5.G, a number of Memorandums and Arbitration decisions guide the maximum of FTRs depending on a carrier's overtime designation or lack thereof. Even so, we should be able to get our heads around things with the help of some tables, illustrations, and keeping clear distinctions of what applies to who. For clarity, our categories of FTR are: 1. a FTR who has neither signed up for the overtime desired list (ODL) nor the work assignment list (WAL) whom we will refer to as "8-hour carriers"; 2. a FTR who has signed up for the WAL whom we will refer to as WAL carriers; and 3. a FTR who has signed up for either the 10-hour or 12-hour list of the ODL whom we will refer to as ODL carriers.

As far as FTRs, the simplest FTR to get a sense of might be the 8-hour carriers. As FTR carriers, 8-hour carriers have their basic work week augmented by Article 8.5.F. Article 8.5.F has 4 layers of regulations dealing with overtime work on scheduled and non-scheduled days, as well as the total number of days a carrier can work in a week and the total number of regularly scheduled days that a carrier can work overtime on. Article 8.5.F holds that Management cannot require a FTR to: 1. work overtime on more than 4 of 5 regularly scheduled days; 2. work more than 10 hours on a regularly scheduled day; 3. work more than 8 hours on a non-scheduled day; or 4. over 6 days in a service week.

Day and eligible hours	**Total Hours**
Four (4) of five (5) scheduled days, max 10 hours	40 hours
Fifth scheduled day, max 8 hours	8 hours
Sixth possible day, non-schedule day, max 8 hours	8 hours
Total possible contractual hours	**56 hours**

If we do the math as in the table above, we find that for an 8-hour carrier who does not work their non-scheduled day, 48 hours is the maximum work hours in a service week; and if an 8-hour carrier works their non-scheduled day, 56 hours is the maximum work hours in a service week.

For the sake of simplicity, we'll deal next with the ODL carriers because WAL carriers are a sort of hybrid between 8-hour carriers and ODL carriers. ODL carriers seem simple and most stewards treat them as such. Following Article 8.5.G.1, Management may not require ODL carriers to work: 1. more than 12 hours in a day, but ODL carriers are exempted from the 12 consecutive hours limit of ELM 432.32; and 2. more than 60 hours in a week. Straight forward, right? Sure, but not so fast! If one reads the 1984 Memorandum that appears in the JCAM, one finds that the memorandum clearly states that ODL carriers are still subject to some of the regulations of 8.5.F! Which regulations? Management may not require an ODL to: 1. work overtime on more than 4 of 5 regularly

scheduled days; 2. work more than 8 hours on a non-scheduled day; or 3. work more than 6 days in a service week. Ergo, ODL carriers restrictions can be worked out in the following tables. (There are two tables in this instance depending on NSD worked versus not worked. An ODL carrier could not work 4 days at 12 hours and work their NSD without going over 60 hours.)

Day and eligible hours	**Total Hours**
Four (4) of five (5) scheduled days, max 12 hours	48 hours
Fifth scheduled day, max 8 hours	8 hours
Total possible contractual hours	**56 hours**

Day and eligible hours	**Total Hours**
Three (3) of five (5) scheduled days, max 12 hours	36 hours
Two (2) of five (5) scheduled days, max 8 hours	16 hours
Sixth possible day, non-scheduled day, max 8 hours	8 hours
Total possible contractual hours	**60 hours**

If we look at the math in the table above, if an ODL carrier does not work their non-scheduled day then 56 hours is the maximum service week hours; and if an ODL carrier does work their non-scheduled day then 60 hours is the maximum service week hours.

Finally, the most complicated of them all: WAL carriers. WAL carriers require accounting for both the Letter of Intent for the Work Assignment List, JCAM clarifications on the WAL carriers, and Article 8.5.F. The Letter of Intent establishes the WAL for carriers desiring to work overtime only on their own route. The WAL is understood as distinct from the ODL in that it does not subject WAL carriers to Article 8.5.G.1. Rather, the Letter of Intent holds that WAL carriers are available up to 12 hours with the implication that those 12 hours are worked exclusively on the WAL carrier's route rather than any general overtime as with ODL carriers. On page 8-21 of the 2022 JCAM, the parties clarify that WAL carriers are treated like any other FTR not on the ODL (8-hour carriers in our categories) when dealing with overtime not on a WAL carrier's route and when dealing with overtime on a WAL carrier's non-scheduled day; in other words, in such situations Article 8.5.F applies as described in the section on 8-hour carriers. Another table will certainly be of use here.

Max days & hours for WAL carrier on and off assignment, no NSD	**Total Hours**
Three (3) of five (5) scheduled days on assignment OT, max 12 hours	36 hours
Fourth of five (5) scheduled days off assignment OT, max 10 hours	10 hours
Fifth scheduled day, max 8 hours	8 hours
Total possible contractual hours	**54 hours**

Dealing with a WAL carrier who only works overtime on their own route within a service week is relatively simple; such a circumstance follows the same pattern as ODL carriers with the same distinction of whether or not the carrier worked their non-scheduled day. If a WAL carrier works a combination of both on- and off-route overtime, the maximum numbers differ depending on whether or not said carrier works their non-scheduled day. For a WAL carrier working on- and off-route overtime in a service week who does not work their non-scheduled day, 54 work hours is the maximum for a service week; and for a WAL carrier working on- and off-route or all off-route overtime in a service week who does work their non-scheduled day, 60 work hours is the maximum for a service week.

Max days & hours for WAL carrier on and off assignment, with NSD	**Total Hours**
Two (2) of five (5) scheduled days on assignment OT, max 12 hours	24 hours
Two (2) of five (5) scheduled days off assignment OT, max 10 hours	20 hours
Fifth scheduled day, max 8 hours	8 hours
One non-scheduled day, max 8 hours	8 hours
Total possible contractual hours	**60 hours**

Similarly, if a WAL works overtime exclusively off-route, then the maximum numbers differ depending on whether said carriers work their non-scheduled day. For a WAL carrier exclusively working off-route overtime in a service week who does not work their non-scheduled day, 48 work hours is the maximum for a service week; and for a WAL carrier exclusively working off-route overtime in a service week who does work their non-scheduled day, 56 work hours is the maximum for a service week.

Now that you know your respective daily and weekly hours limit, what comes next? Does this mean that you can hold Management to these limits? Well, that depends on who you ask and how organized we are! Anyone who has spent the slightest amount of time working as a shop steward, at least a contemporary shop steward, or who has discussed work day and work week limits with their shop steward can tell you that there is a far cry between the limits on paper and the limits in the eyes of Management, as well as those who work beside us albeit for different reasons. The pieces that follow will deal with these divergences more at length! For now, consider what ought the work day and work week limits be in your eyes and how might we get there?

Part 2:

So, now that you know the nitty-gritty of work-hour regulations by way of the National Agreement and other related documents, i.e. now that you "know your rights," what are you going to do the next time your supervisor and/or your manager order you to work beyond your contractual limits? Tell them you know your rights and refuse to have them violated, right? Right? Well, … not quite. According to the 80-year-old grounding doctrine of North American Labor Arbitration that Arbitrator / Umpire Harry Shulman established in 1944: "the employee himself must … normally obey the order even though he thinks it improper. … He may not take it on himself to disobey" (3 LA 780). If you are like me, then you may have heard "work now, grieve later" and you may have thought it specific to your particular craft or your particular contract, but, in fact, the principle of "work now, grieve later" reigns over all who work under labor agreements owing to Shulman's 1944 opinion.

Well… well… what if you're not a he? That doesn't seem to matter to Shulman in spite of Shulman's use of gendered language. Rather, the only exceptions that Shulman provides are as follows: "An employee is not expected to obey an order to do that which would be criminal or otherwise unlawful. He may refuse to obey an improper order which involves an unusual health hazard or other serious sacrifice. But in the absence of such justifying factors, *he may not refuse to obey merely because the order violates some right of his under the contract*" (3 LA 780; emphasis added).

Okay, but certainly… certainly there must be some implicit recognition that among the privileges of shop stewards is the privilege of disobeying orders that violate the contract and instructing other workers to do so when contract violations would occur should a worker comply with a particular order? Right? Right? … Wrong! Using the language of the time, Shulman stated: "No committeeman or other union officer is entitled to instruct employees to disobey supervision's orders *no matter how strongly he may believe that the orders are in violation of the agreement*. … his course is to take the matter up with supervision and seek to effect an adjustment. Failing to effect an adjustment., he may file a grievance. But they may not tell the employee to disregard the order" (3 LA 780).

How could this be? This simply can't be right! With what justifications could Shulman have made such pronouncements? Following the letter of the decision, Shulman believes that establishing such a principle within labor arbitration is paramount for ensuring that "civilized collective bargaining" is not overcome by "jungle warfare" (3 LA 781), that the grievance procedure not be usurped by "extra-contractual methods" (3 LA 780). According to Shulman, "Neither party can be the final judge as to whether the contract has been violated. The determination of that issue rests in collective negotiation through the grievance procedure" (3 LA 781). And why shouldn't we rest assured having

read Shulman's explanations? For Shulman guarantees that "the grievance procedure is prescribed in the contract precisely because the parties anticipated that there would be claims of violations which would require adjustment. … The grievance procedure is the orderly, effective, and democratic way of adjusting such disputes within the framework of the collective labor agreement" (3 LA 780-81).

We cannot trust Shulman's word because—beneath Shulman's veiled concern with the sanctity of democracy, equity, and a fair field of negotiation between labor and management—Shulman makes the asymmetry of collective bargaining quite clear. Although union officers, stewards, and rank-and-file laborers are not allowed to circumvent the grievance procedure for the sake of "self-help" as Shulman puts it, Shulman explicitly names the right of management to, in effect, suspend the contract and impinge on the collective bargaining agreement. Shulman states at length:

> *But an industrial plant is not a debating society. Its object is production*. When a controversy arises, production cannot wait for exhaustion of the grievance procedure. While that procedure is being pursued, production must go on. And some one must have the authority to direct the manner in which it is to go on until the controversy is settled. *That authority is vested in supervision. It must be vested there because the responsibility for production is also vested there; and responsibility must be accompanied by authority.* It is fairly vested there because the grievance procedure is capable of adequately recompensing employees for abuse of authority by supervision. (3 LA 781; emphasis added)

Anyone who has worked on a labor agreement and endured having violations go all the way up to arbitration knows that Shulman expresses numerous fables as if they are facts.

Although Shulman insists that the shop floor (or, more accurately, the killing room floor) is not a debating society, there is much within Shulman's remarks that necessitates a rebuttal. For instance, supervision is only responsible for production in the world of fables. If it were such that supervision were responsible for production then it would be no matter for laborers to refuse orders from supervision in violation of the contract, because, in the world of fables, supervision, not labor, is responsible for production. We, from the vantage of the rank-and-fowl know Shulman's statement to be false, and so, too, does Shulman evidently; otherwise, Shulman would not argue so vehemently for the necessity of labor's compliance with orders in violation of a labor agreement. Shulman, as well, is clearly aware that the responsibility of production remains with the rank-and-file no matter how much Shulman tries to argue against the point.

What's more, we must ask from the vantage of the rank-and-file: what constitutes adequate compensation for the constancy of abuse that we face? When one deals with the issue of hours violations, which is the subject of Part 1 above, how can a company repay the hours stolen? When hours violations occur on a daily and weekly basis, how much money would it take to balance the debt that management has incurred from the responsibility that they have falsely claimed and the authority that they have falsely claimed from it? Has management not become insolvent? Has the time not come for we, those truly responsible for production, to assume the authority that Shulman falsely attributes to supervision? If I may, I say that the time has long since come, that only a fundamental re-organization and re-orientation of labor could ever balance the scales for all that we are owed; this is why we can't w8!

Yet, if we, the rank-and-file, are to not merely assume the position of management as it is, but to fundamentally transform the orchestration of labor then we have quite the task in front of us. So where to begin that we not displace management and merely re-invented their violent, quartering wheel? Perhaps with the workday and its endlessness! The closest Shulman comes to fact is arguing for having American labor law's focal point not be the livelihood of workers, but rather the sanctity and necessity of ceaseless production. If one simply consults the introduction to the Wagner Act of 1935 (i.e. the National Labor Relations Act, which established the National Labor Relations Board), one finds Shulman still a touch off the mark. Production alone is not the focal point of American labor law, but commerce more broadly. Section 1 of the Wagner Act states outright:

> Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees. (Section 1, §151)

Although the Wagner Act's introductory section makes reference to "the right of employees," these rights are secondary and subordinate to "safeguard[ing] commerce from injury, impairment, or interruption, and promot[ing] the flow of commerce." In other words, commerce comes first, and, if American labor law has any concern with laborers at all, the concern for laborers is less than secondary. Not only is the concern less than secondary, there is little by way of attention paid to our livelihoods; rather, the attention is on how to construct a myth of protecting laborers such that those who seek to exploit our labor through commerce are able to assure the incessancy of commerce. Here again, we return to a certain insolvency, a debt instituted by American labor law that such law simply cannot repay; it is in light of this that we cannot w8 and that we call upon each other, the rank-and-fowl to join forces in rearranging the administration of such debts with the working day first in our sights. Should this pamphlet move you, please visit rankandfowl.org or contact info@rankandfowl.org for more information on how to get involved in the campaign, because WE CAN'T W8!

American Postal Workers Union (APWU). “Work Year List.” https://apwu.org/news/industrial-relations-postal-support-employees-pses/work-year-list.

National Labor Relations Board (NLRB). “National Labor Relations Act.” https://www.nlrb.gov/guidance/key-reference-materials/national-labor-relations-act.

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