GRIEVANCE DOCUMENTATION

central state seven-pack conference

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CHAPTER 1

THE ISSUE: SUPERVISORS PERFORMING BARGAINING UNIT WORK IN 1.6.A OFFICES

THE DEFINITION

Supervisors in offices with 100 or more bargaining unit employees are prohibited from performing bargaining unit work unless it falls within one of the five (5) enumerated exceptions in Article 1.6.A.

THE ARGUMENT

As a general rule, supervisors in offices with 100 or more bargaining unit employees are prohibited from doing bargaining unit work. If management claims that the work performed falls within one of the enumerated exceptions the burden shifts to the employer to establish the applicability of that exception.

> *Supervisors are prohibited from performing bargaining unit work...*
>
> Article 1.6.A

Generally, all distribution functions and window work are accepted as exclusively bargaining unit work. Other work, such as timekeeping, administrative duties, etc., may not always be exclusively bargaining unit work. However, if we can show that such work has historically been performed by clerks in an office we have a strong case for arguing that it should not be assigned to supervisors.

The parties have agreed that where supervisors perform bargaining unit work in violation of Article 1.6.A, the appropriate remedy is compensation (at the appropriate rate) to the craft employee(s) who would otherwise have performed that work. A cease and desist remedy is usually appropriate only when the supervisor's performance of bargaining unit work was truly unusual and/or the work performed was *de minimis* (or a small or insignificant amount).

THE INTERVIEW(s)

Bargaining Unit Witnesses

- What supervisor was it and exactly what did you observe him doing? For how long and when (dates and times)?

with the excuse that the work fits one of those exceptions quickly enough on their own. Many times the supervisor will deny doing the work for the length of time alleged in your witness statements but will still admit to doing bargaining unit work for a significant period of time. This will leave you with an enviable dilemma - do you insist on pursuing the entire remedy or do you "settle" for what the supervisor admitted to. Do not anticipate many supervisors agreeing to provide statements. However, what does it hurt to ask?

THE DOCUMENTATION

- Witness statements & interviews
- Supervisor statement or interview
- Remember: WHO saw WHAT? WHO said WHAT? WHEN did it happen (date and exact times)? WHERE did it happen?
- Seniority lists, by section and work area, showing available craft employees
- OTDL for purposes of establishing remedy
- Position descriptions of bargaining unit employees
- PS Forms 1723, if 204-B
- Supervisor sign-in sheet or work record showing they were working

THE AGREEMENT

- National Agreement, Article 1.6.A

CHAPTER 3

THE ISSUE: PAST PRACTICE - FIVE MINUTE WASH UP

THE DEFINITION

A reasonable amount of wash up time is granted to employees who work with dirty or toxic materials through Article 8 of the National Agreement. Article 30 of the National Agreement gives the Union the right to negotiate additional or longer wash-up periods for all employees. Many installations allow some amount of time for a wash up period for their employees. The actual amount of wash-up time is subject to the grievance procedure. Where no specific LMOU provision exists, the past practice in the office determines the length of the wash-up time that is allowed each employee.

THE ARGUMENT

The employees in the installation have enjoyed a five minute wash-up period prior to going to lunch and prior to going home for a long period of time. Management has unilaterally ended the long standing past practice without any discussion with the Union. Article 5 of the National Agreement prohibits the Employer from taking a unilateral action without discussion with the Union.

To establish a past practice, the claimed practice must meet the following conditions: 1) clarity and consistency, 2) longevity and repetition, 3) acceptability, 4) underlying circumstances and 5) mutuality. The fact that supervision allows the employees to leave the work area and take the 5 minutes wash-up time demonstrates the acceptability. It must be clear to all involved where the employees are going five minutes prior to clock out time. In this case, the Union must prove that the past practice of 5 minutes wash-up is a long standing past practice. Senior employees can testify to the fact that the past practice has been in place for a long period of time. Examine your facts carefully. Is everyone taking the five (5) minute wash-up? Are they using the time to wash-up or for other purposes?

5 Elements of a Past Practice

a) clarity and consistency
b) longevity and repetition
c) acceptability
d) underlying circumstances
e) mutuality

- What special circumstances make the 5 minute wash up necessary?
- Until recently has anyone in management ever challenged the 5 minute wash up?
- What were you recently told about the wash up period?

THE DOCUMENTATION

- Witness statements or interviews
- Supervisor interviews or statements
- LMOU provisions
- Notes from service talks, etc. where past practice was previously recognized or announcement of change was made
- Labor-Management minutes / written instructions, etc.
- Any management documents expressing a recognition of past practice
- Correspondence regarding management's intent to change practice
- Any proposals from either party during local negotiations on wash up

THE AGREEMENT

- National Agreement, Article 5
- National Agreement, Article 8.9
- National Agreement, Article 30
- LMOU

CHAPTER 5

THE ISSUE: CASUALS IN LIEU OF PART-TIME FLEXIBLES

THE DEFINITION

Casuals should not be used where part-time flexibles are qualified and available to perform the work at the straight time rate.

THE ARGUMENT

Article 7, Section 1. B.2 obligates the Employer to "make every effort to insure that qualified and available part-time flexible employees are utilized at the straight time rate prior to assigning such work to casuals. It doesn't matter whether the casual worked more or less hours than the part-time flexible in a particular day or in the service week. If, during a particular time frame when management used casuals, one or more part-time flexibles were qualified and available to perform that work at the straight time rate, they must be used.

THE INTERVIEW

- What work did casual employee Smith perform between 1600-2000 on March 3, 1999?
- Isn't part-time flexible Jones qualified to perform that work?
- What hours did part-time flexible Jones work on March 3, 1999?
- Since Jones worked only from 1900-2400, why wasn't she used from 1600-1900 to perform the work performed by Smith?
- What efforts, if any, do you make to schedule part-time flexible employees for up to eight (8) hours before scheduling casuals to work?

THE DOCUMENTATION

- PTFs' Clock Rings / Time Cards

- Casuals' clock rings / time cards
- PS Forms 50 for casuals
- Training records showing qualification
- Work schedules (both PTF's and casuals)
- 3971's (PTFs' request to be excused)
- Witness statements or interviews
- Supervisor statements or interviews
- Graph or chart PTF and casual workhours showing PTF availability at straight time when casuals worked
- PTF seniority list
- Explanation of operation number reflected in clock rings
- Training records or other documentation demonstrating that PTF's were qualified to perform this work

THE AGREEMENT

- National Agreement, Article 7.1.B.2

CHAPTER 6

THE ISSUE: CROSSING CRAFTS, OCCUPATIONAL GROUPS, AND/ OR WAGE LEVELS

THE DEFINITION

Management may not normally make cross-craft or cross-occupational group assignments unless there is an insufficient workload in the losing craft and an unusally heavy workload in the gaining craft.

THE ARGUMENT

The circumstances under which cross-craft or cross-occupatinal group assignments may be appropriate are very limited. Article 7 is a general prohibition against such assignments with very limited exceptions. If management claims an insufficient workload in one craft and an unusually heavy workload in another, the burden shifts to the Employer to prove those claims. Management may not make such assignments solely to avoid overtime in one craft or occupational group.

THE INTERVIEW

- What work did Letter Carrier Smith perform on Wednesday between 0700 and 0900?
- Isn't (distribution of parcel post) normally Clerk Craft work in this office?
- Who made the decision to make this cross-craft assignment?
- Why did you decide to use Letter Carrier Smith to perform this Clerk Craft work?
- Why couldn't you have used Clerks to perform this work?
- Wasn't one of your major concerns the fact that you would have had to bring in a Clerk on overtime?
- How much overtime did the Letter Carrier Craft work on the day in question?
- How much overtime was worked in the Clerk Craft on that day?

THE DOCUMENTATION

- Position description(s) of employees assigned across crafts, occupational groups or levels
- Position description(s) of employees normally performing this work
- Clock rings of employees assigned across crafts, occupational groups or levels
- Clock rings or work hour summary for all members of craft working in APWU craft or occupational group (overtime level in losing craft or occupational group)
- Clock rings or work hour summaries in gaining craft (overtime level in gaining craft)
- PS Forms 1723 [Assignment Order] if used
- PS Form 1230 A or B if used [usually in smaller offices]
- Mail volume reports
- Identify or document work available in employee's own craft
- Witness statements or interviews
- Supervisor interviews or statements
- Light / limited duty job offer (if applicable)
- Medical restrictions of employee (if any) being assigned across craft lines
- Transfer hours report

THE AGREEMENT

- National Agreement, Article 7.2
- National Agreement, Article 13
- National Agreement, Article 19
- Employee & Labor Relations Manual, Part 546

CHAPTER 8

THE ISSUE: CONSECUTIVE OFF DAYS

THE DEFINITION

Employees are entitled to work schedules with consecutive work days (and consecutive off days). Split duty assignments with split off days must be minimized.

THE ARGUMENT

Article 8.2.C requires that "[a]s far as practicable the five days [of a full-time regular employee's work week] shall be consecutive days..." What this means is that the Employer must make every effort to avoid split off days and where it must post a position without consecutive off days, the burden shifts to the employer to show why doing so was not "practicable." Employees have a considerable interest in working a consecutive day work week and the Employer must shoulder an equally considerable burden in demonstrating why this is not "practicable" or "doable." Simply avoiding overtime or convenience of scheduling excuses will usually not be enough. The Employer must show that some significant service consideration required the change.

THE INTERVIEW

- Didn't this duty assignment previously have consecutive off days?
- Who made the decision to change it to split off-days?
- Why was this duty assignment changed to split off-days?
- What consideration, if any, was given to retaining some form of consecutive off days?
- Was your sole reason for making this change an attempt to reduce overtime on Mondays?
- Has your overtime decreased on Mondays?
- What change has occurred in your overtime on the other days of the week?

- How many other split off day duty assignment do you have posted in this section?

THE DOCUMENTATION

- Previous job posting
- New job posting or notice to employee/union of intent to abolish and repost
- Clock rings / time cards
- Witness statements or interviews
- Supervisor interviews or statements
- Overtime records (by day of week)
- Mail volume reports or other documentation of workload by day of week
- Delayed mail reports, if any
- Position description
- LMOU provisions
- Documentation as to other duty assignments in the section or office (how many are currently consecutive off days and how many are split?)
- Casuals and PTF's work schedules

THE AGREEMENT

- National Agreement, Article 8.2.C
- LMOU

CHAPTER 9

THE ISSUE: OVERTIME ASSIGNMENTS

THE DEFINITION

Full-time employees not on the overtime desired list (OTDL) may not be required to work overtime unless all available employees on the OTDL have worked up to twelve (12) hours in a service day or sixty (60) hours in a service week.

THE ARGUMENT

The overtime provisions in Article 8 and your LMOU are intended to protect employees who do not wish to work overtime from having to do so whenever possible while giving those employees who wish to work overtime the opportunity to do so. Management cannot require non-OTDL employees to work overtime unless they have first maximized the utilization of available and qualified OTDL employees. Management may not bypass available OTDL employees and require non-OTDL employees to work overtime solely to avoid the payment of penalty overtime.

THE INTERVIEW

- What work did not the non-OTDL employees perform on overtime?
- Haven't you been told by your superiors to avoid penalty overtime at all costs?
- Isn't the main reason you sent the OTDL employees home after two (2) hours because they would have thereafter gone into a penalty overtime status?
- There is no dispute that the OTDL employees were available and qualified to perform the work in question (other than their penalty status), is there?
- Were there any reasons other than your concerns about penalty overtime which precluded your using the OTDL employees up to twelve hours instead of requiring the non-OTDL employees to work?
- Did you make the decision to send the OTDL employees home after 10 hours or were you told to do so?

- Isn't it true that if the OTDL employees had been used for an additional two hours it would still have been possible to meet the critical dispatch?

THE DOCUMENTATION

- Overtime Desired List
- Seniority list
- Clock rings / time cards
- Overtime authorization (PS Form 1261)
- Dispatch schedules
- Witness statements or interviews
- Supervisor interviews or statements
- 3971's for any employees excused
- Position description of employee doing work
- Position description of bypassed employee
- LMOU provisions
- Work schedules
- Training records or documentation establish qualification of bypassed employee

THE AGREEMENT

- National Agreement, Article 8.5
- LMOU

CHAPTER 10

THE ISSUE: ABSENT WITHOUT APPROVED LEAVE (AWOL)

THE DEFINITION

Absent without approved leave (AWOL) is a non-pay status resulting from a management determination that no kind of leave (paid or unpaid) can be granted, either because (1) the employee did not obtain advance authorization or (2) the employee's request for leave was denied.

THE ARGUMENT

The Postal Service's leave policy still must be administered on an equitable basis, considering both the needs of the Employer and the welfare of the individual employee. The supervisor may not arbitrarily, capriciously, or discriminatorily disapprove leave, thus placing the employee in an AWOL status. Nor may every disapproved request for annual leave or sick leave automatically be charged as AWOL. If the supervisor, for instance, is satisfied that a request for annual leave is legitimate, but the employee has insufficient annual leave, the request should be approved but recorded as LWOP. Or, if a request for sick leave is warranted but not compensable under the sick leave provisions, the employee should be given the option to convert the request to annual leave or LWOP, instead of automatically being charged AWOL. Similarly, not every leave request for which advance authorization was not obtained may be charged as AWOL. The leave provisions anticipate that occasional requests for unanticipated annual leave or sick leave will occur. Even a blanket policy that all no-calls or late calls are to be charged AWOL would be inappropriate. Undoubtedly, many no-calls will turn out to warrant an AWOL determination. However, each case must be examined on it's own merits. For example, where an employee was incapacitated and notified the employer as soon as she was able to do so, sick leave would be appropriate rather than AWOL.

THE INTERVIEW

- Why was the grievant determined to be AWOL?
- Who made the decision?
- Is everyone who calls in late automatically AWOL?

- Is this policy that everyone who fails to call in before their scheduled start time is automatically AWOL in writing somewhere?
- You did understand, didn't you, that grievant was in the hospital this morning and didn't have access to a phone until two (2) hours after her tour began?
- Would it have made any difference if you would have known this?
- Is there anything grievant could have done or submitted to get you to change your mind and approve sick leave for the two (2) hours before she called in?

THE DOCUMENTATION

- PS Form 3971 (leave slip)
- Medical/emergency evidence or documentation
- Grievant's statement or interview
- Witness statements or interviews
- Supervisor interviews or statements
- Call-in records
- Employee's PS Form 3972
- Discipline notice if issued
- Documentation or statements as to other employees treated differently

THE AGREEMENT

- National Agreement, Article 10
- National Agreement, Article 19
- LMOU
- Employee & Labor Relations Manual, Part 510

CHAPTER 11

THE ISSUE: DENIED ANNUAL LEAVE

THE DEFINITION

Annual leave is an earned benefit. Employees earn annual leave each year and they are entitled to use that earned leave either for scheduled vacations, incidental scheduled leave or emergency situations.

THE ARGUMENT

Some annual leave is guaranteed by the Agreement. Most LMOU's have provisions on vacation scheduling guaranteeing employees certain rights to approved annual leave for their scheduled vacations. Some LMOU's even provide for guaranteed incidental leave up to certain fixed percentages during the year. These are negotiated rights to use an earned benefit and management may not deprive employees of this right. Once annual leave is approved it must be honored except in serious emergency situations.

All requests for incidental annual leave other than those guaranteed under the Agreement must be approved or disapproved by the supervisor. Where no specific procedures are spelled out in the parties LMOU, the supervisor's decision must not be arbitrary or capricious. It also may not be discriminatory and must be equitable, considering on a case-by-case basis both the needs of the service and the welfare of the individual employee.

THE INTERVIEW

- It appears that you are the supervisor who disapproved Johnnie Wilson's request for annual leave. Is that correct?
- Why did you disapprove it?
- Were there any specific needs of the Service which factored into your decision?
- You didn't happen to ask Johnnie why he needed this annual leave, did you?
- Why didn't you feel that would be necessary?

- As I understand it, you had decided that no additional annual leave would be granted on Wednesday, so it really didn't matter at all what Johnnie's reason for requesting leave was, did it?
- Is this policy that no more than two (2) people may be off on annual leave a written instruction from your superiors or is it one you have adopted on your own?
- Are there ever any exceptions to this policy?

THE DOCUMENTATION

- PS Form 3971 denying the leave request
- LMOU provisions
- Vacation calendar or leave book
- Seniority list
- Grievant's statement or interview
- Witness statements or interviews
- Supervisor interviews or statements
- Time cards / clock rings
- Employee's PS Form 3972
- Employee's annual leave balance (check stub or computer print out)
- Work schedule and other PS Forms 3971 for day in question
- Documentation and statements as to other employees who may have been treated more favorably

CHAPTER 12

THE ISSUE: DENIED SICK LEAVE

THE DEFINITION

Sick leave is an earned benefit. Employees earn sick leave each year and they are entitled to use that earned leave when they are incapacitated or unable to work because of an injury or illness. In addition, employees may use sick leave to care for an incapacitated family member (parent, spouse or child).

THE ARGUMENT

Sick leave is an earned benefit. Sick leave insures employees against loss of pay if they are incapacitated for the performance of their duties because of illness, injury, pregnancy or medical treatment. When possible sick leave is to be requested and approved in advance. However, in unexpected illness/injury situations the employee must notify appropriate postal authorities as to their illness/injury and expected duration of absence. The supervisor is responsible for approving/disapproving each sick leave request. Such approval may not be unreasonably, arbitrarily or capriciously denied. Medical documentation may only be required when the absence is for more than three (3) days, when the employee is on restricted sick leave, or when the supervisor has a legitimate reason to suspect abuse.

Under the Dependent Care Memo, employees are entitled to use up to 80 hours of sick leave each year to care for incapacitated family members (spouse, parent, or child). Such requests for sick leave are subject to the normal documentation requirements for sick leave.

THE INTERVIEW

- Why did you disapprove Mary's request for sick leave?
- Didn't Mary call in before her tour to indicate she would be unable to work because of her cold?
- So as I understand it, you just don't feel that Mary's cold was severe enough to incapacitate her?
- Other than that belief on your part do you have any other basis for believing that

Mary was able to work?

- Under what circumstances do you believe sick leave is appropriate?
- Why did you request medical documentation?
- Under what circumstances is it appropriate for you to request medical documentation?
- Why don't you believe it was appropriate for Mary to use sick leave to care for her sick child?

THE DOCUMENTATION

- PS Form 3971 denying leave request
- Medical documentation
- Call-in records
- Grievant's statement or interview
- Witness statements or interviews
- Supervisor interviews or statements
- Employee's PS Form 3972
- Restricted sick leave records
- Documentation or evidence as to "blanket policy" existing as to medical documentation requirements
- FMLA or dependent care sick leave documentation
- Employee's sick leave balance (check stub or computer print out)
- Documentation or statements as to employee's treated more favorably

CHAPTER 13

THE ISSUE: RESTICTED SICK LEAVE

THE DEFINITION

Employees may only be placed on restricted sick leave in accordance with the strict requirements of the Employee & Labor Relations Manual. Management's action may not be arbitrary, must be for the reasons specified and must follow the procedures spelled out in the handbook.

THE ARGUMENT

There are two (2) possible reasons for placing an employee on restricted sick leave. Supervisors who have evidence that an employee is abusing her sick leave may immediately place her on the restricted sick leave list. "Abuse" means using sick leave for reasons other than incapacitation. It does not mean using too much sick leave. There is no minimum sick leave balance which determines excessive use. When an employee is placed on restricted sick leave because they are considered to have used sick leave to frequently, ELM 513.37 spells out a very specific procedure including a number of reviews, discussions with the employee, and opportunities to correct the alleged deficiency which the Service must follow. This process entails some 9 months. Before the employee may be placed on restricted sick leave the following steps must occur: 1) establish an absence file; 2) review the absence file by both the supervisor and higher level management; 3) review of absences and sick leave usage with employee; 4) review of the next quarters absences; 5) if there has been insufficient improvement, meet with the employee and advise him that if there is no improvement during the next quarter, the employee will be placed on restricted sick leave; 6) if there is no improvement, the employee may then be placed on restricted sick leave. If this complete procedure is not followed, an employee may not be placed on restricted sick leave for alleged over-use of sick leave.

THE INTERVIEW

- Were you the supervisor responsible for placing grievant on restricted sick leave?
- Would it be fair to say that you were unhappy with the amount of sick leave grievant has been using during the past few months?
- Is it true then, that the grievant was placed on restricted sick leave because he had used an excessive amount of sick leave?

- Were there any other reasons why you placed grievant on restricted sick leave.
- Other than your suspicions, do you have any evidence at this time indicating the grievant was not actually incapacitated on each of the occasions he requested sick leave?
- On what occasions have you reviewed grievant's attendance with him?
- On what occasions prior to placing grievant on restricted sick leave have you discussed the possibility of restricted sick leave and its consequences with grievant.
- Did you ever tell grievant that if he did not improve his attendance within the next 90 days he would be placed on restricted sick leave.
- Do you have a minimum sick leave balance which you believe triggers consideration for restricted sick leave?

THE DOCUMENTATION

- Notice of placement on restricted sick leave
- PS Forms 3971
- PS Forms 3972
- Medical documentation
- Witness statements or interviews
- Supervisor interviews or statements
- Copy of quarterly listing
- Employee's discipline records, if any
- Grievant's sick leave balance (check stub or computer print out)
- Check employee's OPF for attendance awards, etc.
- FMLA documentation

CHAPTER 14

THE ISSUE: REQUIRING MEDICAL DOCUMENTATION FOR ABSENCES OF 3 DAYS OR LESS

THE DEFINITION

For periods of absence of three (3) days or less, management may accept the employee's statement explaining the absence and request for sick leave. Medical documentation may be required only when the employee is on restricted sick leave or when the supervisor has a reasonable basis to believe it is necessary in order to protect the interests of the Postal Service.

THE ARGUMENT

The supervisor's request for medical documentation may not be arbitrary or capricious. It must be based upon a legitimate belief that real interests of the USPS must be protected. Generally, this would mean that the supervisor must have some reason to believe that the employee may not actually be incapacitated as claimed. A history of discipline for attendance might be one consideration. A pattern of requesting sick leave in conjuction with off days or pay days might be another. Any evidence of possible abuse would certainly raise legitimate suspicion. If the employee had previously been denied annual leave and then called in for sick leave this might be another. Absent any of these conditions, we would argue that the supervisor's request was arbitrary and a violation of the Agreement. No blanket policy requiring everybody to call in on certain days, etc., is permissable. Appropriate medical documentation should be requested at the time of the call-in, not later, and most certainly should never be requested after the employee's return to work. Where medical documentation is requested in violation of the ELM, the appropriate remedy would be compensation for any medical expenses, time spent in getting the documentation, mileage and any other out-of-pocket expenses.

THE INTERVIEW

- Why did you instruct Sarah to provide medical documentation to support her 2 day request for sick leave?
- Is Sarah on restricted sick leave?
- Do you have any evidence that Sarah has abused her sick leave or requested sick leave when she was not actually incapacitated?

- What, if anything, did you review before you decided to require medical documentation?
- To your knowledge, were any other employees required to provide medical documentation under similar circumstances?
- Isn't it true that Sarah has never been disciplined for attendance?
- Had she previously requested annual leave for these two days?

THE DOCUMENTATION

- Medical documentation
- Medical bill, receipt or canceled check
- Record of mileage
- Receipts or documentation of other expenses
- Witness statements or interviews
- Supervisor interviews or statements
- PS Forms 3971
- PS Forms 3972
- Restricted sick leave records
- Any related discipline or AWOL charges
- Documentation or statements regarding other employees treated more favorably

THE AGREEMENT

- National Agreement, Article 10
- National Agreement, Article 19
- Employee & Labor Relations Manual, Part 513

CHAPTER 15

THE ISSUE: ADVANCE SICK LEAVE

THE DEFINITION

Employees who have exhausted their sick leave and suffer from a serious disability or ailment are entitled to request the advance of up to 240 hours of sick leave. Such requests must be supported by appropriate medical documentation and provided there is reason to believe the employee will be able to return to work and be able to repay the advance, such requests may not be unreasonably denied.

THE ARGUMENT

Advance sick leave is provided for in ELM 513.5. The fact that an employee has exhausted their sick leave is not a basis for denying advance sick leave. By definition all applicants for advance sick leave will have exhausted their sick leave. So long as the employee has exhausted his sick leave, can reasonably be expected to return to work and repay the advance, and supports the request with appropriate medical documentation of a serious medical condition, the installation head may not arbitrarily deny the request. Simply put, the installation head must have a reasonable basis for doing so and must be able to explain it.

THE INTERVIEW

- As postmaster or installation head, you are responsible for approving or disapproving all requests for advance sick leave, isn't that correct?
- Did you disapprove the grievant's request for advance sick leave?
- Was the request accompanied by appropriate medical documentation?
- Was there any reason to believe that grievant would not recover and be able to return to work?
- Why did you disapprove the grievant's request for advance sick leave?
- Do you have any evidence that grievant abused his sick leave or is your major concern simply that he has used too much sick leave and should have saved more

over the years?

- Have you ever approved any requests for advance sick leave? If so, for whom and when?
- Have you ever disapproved any requests for advance sick leave? If so, for whom and when?
- How did their situation differ from the grievants?

THE DOCUMENTATION

- Request for advance sick leave
- Medical documentation
- Management's denial of advance sick leave request
- Grievant's statement or interview
- Supervisor interviews or statements
- PS Forms 3972
- Previous discipline for attendance
- Restricted sick leave list
- Medical documentation for any serious illness which used up significant amounts of sick leave
- PS Forms 3971 showing annual leave or LWOP actually used for absence
- All advance sick leave requests and action taken (regardless of craft) for previous 12 months

THE AGREEMENT

- National Agreement, Article 10
- National Agreement, Article 19
- Employee & Labor Relations Manual, Part 513

CHAPTER 16

THE ISSUE: ACT OF GOD LEAVE

THE DEFINITION

When groups of employees are prevented from working or reporting to work by community disasters (such as storms, fire, or flood) which is general rather than personal in scope and impact the installation head should approve "Act of God" Administrative Leave.

THE ARGUMENT

Not every storm is an "Act of God" as that term is used in the Employee & Labor Relations Manual (ELM). Only when the storm rises to the level of a community disaster can it qualify. It must prevent groups of employees from working or reporting to work. When all these things occur, employees are entitled to the "Act of God" administrative leave benefit as spelled out in ELM 519. "Act of God" leave is a contractual entitlement. While the Employer does have discretionary authority to approve or disapprove administrative leave within the specific confines of ELM 519, "Act of God" administrative leave is not subject to the arbitrary or capricious whim or discretion of management. The installation head is required to determine whether the employee's absence was due to the storm, or whether he or she could have reported to work with reasonable diligence.

THE INTERVIEW(s)

Postmaster/Installation Head

- Are you the management official responsible for determining whether to approve "Act of God" leave in this installation?
- Why did you disapprove "Act of God" leave for employees who requested it during the last storm?
- Isn't it true that almost 85% of our employees were unable to make it to work because of the storm?
- What percentage of employees do you believe would need to be prevented from

winter driving conditions?

THE DOCUMENTATION

- Newspaper accounts
- Television or radio accounts (videotapes or tape recordings)
- State, local, or federal declarations of emergency
- Witness statements or interviews for each employee (method of transportation usually used, routes taken, efforts made, and problems encountered)
- Supervisor interviews or statements
- Cancellations of USPS services (letter carriers / rural carriers / MVS or contract routes, etc.
- Truck arrival and departure records
- Machine run times / MODS / volume reports / tour condition reports
- LMOU provisions on curtailment
- Prepare map showing all employees who made it and those who didn't
- Public transportation records (were, airports, city buses, taxi cabs, etc. running?)
- Weather Service reports
- Highway Patrol or local authority road condition reports
- List of all employees identifying those who made it and those who didn't (including start time)
- PS Forms 3971 for each employee who called in

CHAPTER 17

THE ISSUE: FAMILY & MEDICAL LEAVE ACT VIOLATION

THE DEFINITION

Qualified employees are entitled to up to twelve weeks of approved FMLA protected leave during each leave year, when such absences are necessitated by the employee's own incapacitation, or the incapacitation of the employee's spouse, child, or parent, due to a serious medical condition, or as the result of the birth or adoption of a new son or daughter. When properly documented and requested such leave requests must be approved and may not be the subject of discipline or other adverse action.

THE ARGUMENT

Family and Medical Leave is protected by the law and by the Contract. Enacted by statute, and further developed through Department of Labor Regulations as well as ELM 515, FMLA leave is a protected right. Properly submitted and documented requests by eligible employees for FMLA protected leave may not be denied. The law, and postal regulations, requires that the employee make the Employer aware that he is requesting leave for an FMLA covered condition. The employee does not have to specifically request FMLA leave to invoke the protection of the Act. The law requires, and the Postal Service has acknowedged, that no employee may be disciplined for using FMLA protected leave.

THE INTERVIEW

- Do you have any reason to believe that Charlie is not eligible for FMLA leave?
- Didn't Charlie submit documentation from his child's physician on an appropriate APWU Form supporting his request for leave?
- Were there any parts of that form which were not completely filled out or which you could not understand?
- Why did you disapprove Charlie's request for FMLA protected leave?
- It is my understanding that you approved the leave, "not FMLA." Is that correct?

- Do I understand correctly that you will not approve FMLA protected leave unless the physician's documentation includes a diagnosis and prognosis?

- Is it your understanding that you are entitled to receive and review the physician's prognosis and diagnosis? If so, on what do you base that understanding?

- Do I also understand that the other reason for your denial was because Charlie's six year old son was in the hospital and not at home where Charlie might be needed for his care?

THE DOCUMENTATION

- PS Forms 3971
- FMLA documentation (APWU forms, WH-381, or medical documentation)
- Management correspondence with the employee's doctor
- Copies of all documents given to employee by supervisor
- Grievant's statement or interview
- Supervisor interviews or statements
- Any additional or more detailed medical information
- Copies of specific portions of FMLA regulations cited as being violated
- Previous years work hours to show 1250 hours worked
- Check bulletin boards for appropriate postings
- WH-380
- Call-in records
- PS Form 3972

CHAPTER 20

THE ISSUE: DENIED INFORMATION

THE DEFINITION

Upon request, the Employer is required to permit the Steward to review files, documents and other records relevant to a possible grievance and to provide copies of such documents where needed.

THE ARGUMENT

Whenever management denies information in the form of documentary evidence or witness access for interviews, our due process rights to conduct investigations in grievance processing are violated. In the course of an investigation to determine whether to file a grievance or for evidence gathering in support of a grievance, or, for that matter, to determine whether to continue processing a grievance, the Union has the right to access all relevant information. Often, management denies the Union access to documents, records, forms, witnesses, etc. This denial by management constitutes a very serious due process breach which prevents the best possible defense in a disciplinary case through full development of all defense arguments.

Under the Collective Bargaining Agreement, the Union has contractual rights to all relevant evidence including witnesses. Denial of that information seriously compromises our ability to represent our membership and each denial must be properly challenged. Should management deny information, then several arguments are born:

1. Negative Inference Created

The negative inference argument is best defined as a presumption that the evidence withheld by management would either prove the Union's case or seriously damage the employer's ability to meet any burden of proof it may have.

The Union must argue that the withheld information would have proven - if it had been produced - precisely what the Union contended the information would have revealed. Perhaps just as important, we should demand that because of management's failure to provide requested information, even when that information is made available, because it was denied at the lower steps it can no longer be introduced to support management's case.

- Are you saying Postal Inspector Arnold is not relevant to the Union's grievance?
- What Collective Bargaining Agreement article did you rely upon in denying the Union access to Postal Inspector Arnold?

Denial of information is often a Catch-22 for management and our interview process enables management to really damage their defense of the denial. The interview also ensures management is prevented from presenting some innovative excuse for the denial at arbitration. We not only want proof of denial for our Step 2 appeal, but we want to cement management's reasons for denial. This will greatly enhance our pursuit of this due process violation.

THE DOCUMENTATION

- Request for Information
- Management's denial
- All follow-up correspondence or requests
- Moving papers of the original grievance
- Any documentation which may show either the existence or relevance of the requested information
- Supervisor's interview or statement
- Correspondence/documentation showing status of appeal of information denial under NLRB dispute resolution Memorandum of Understanding

THE AGREEMENT

- National Agreement, Article 15
- National Agreement, Article 17
- National Agreement, Article 31
- National Agreement, Article 3

CHAPTER 24

THE ISSUE: FAILURE TO POST 204-B'S BID ASSIGNMENT AFTER 4 MONTH DETAIL

THE DEFINITION

The duty assignment of a clerk detailed to a nonbargaining unit position in excess of four months shall be declared vacant and shall be posted for bid.

THE ARGUMENT

When management details a bargaining unit employee to a 204-B position for more than four (4) months they have forfeited that employee's right to his bid assignment. The National Agreement requires that the 204-B's duty assignment be declared vacant and that it be posted for bid. PS Form 1723 controls when determining the length of the detail. If the employee comes back to the craft early, an amended Form 1723 should be completed. Management is obligated to provide the Union with copies of every Form 1723 for 204-B details. To the extent possible these copies should be provided in advance of the detail. The employee is prohibited from returning to the craft solely to circumvent this reposting requirement?

THE INTERVIEW(s)

The Supervisor

- How long has John been a 204-B?
- Why haven't you been providing the Union with all of his PS Forms 1723?
- Was it your understanding that John came back to the craft last week because he was getting close to the four (4) months which would have caused his job to be reposted?
- Who did you replace him with as an acting supervisor?
- Was there any particularly heavy mail volume or other pressing need why John was needed back in the craft?

- Did John remind you about his need to go back to the craft to protect his job or were you keeping track of the length of his detail?

- How long did you tell John he needed to stay in the craft in order to "break" his four (4) months to protect his job? Will he be returning to his 204-B assignment after that?

The 204-B

- Hi John. I guess it was pretty lucky that somebody noticed that you needed to get back in the craft in order to protect your bid. Were you keeping track or did somebody remind you?

- What did Supervisor Johnson tell you? Did she suggest how long you needed to stay in the craft before you returned to your 204-B assignment?

- Did you discuss this with anyone else in management?

- Was it your idea to come back or did Ms. Johnson suggest it?

- What did she say, exactly?

- Would it be fair to say then that the only reason you came back to the craft for Monday was to keep your bid from being posted?

THE DOCUMENTATION

- PS Forms 1723

- Clock rings (back up documentation - remember - PS Forms 1723 are controlling)

- 204-B statement or interview

- Witness statements or interviews

- Supervisor interviews or statements

- 204-B's bid duty assignment

- Seniority list

CHAPTER 25

THE ISSUE: REVERSION OF DUTY ASSIGNMENTT

THE DEFINITION

When a vacant Clerk Craft duty assignment is under consideration for reversion, the local Union President must be given an opportunity for input prior to a decision. The decision to revert or not to revert must be made within 28 days and if the duty assignment is reverted a notice must be posted advising of the action taken and the reasons why it was done.

THE ARGUMENT

While management has a right under the Agreement to revert vacant duty assignments that are no longer needed, the local Union President must be given an opportunity to provide input before a decision to revert is made. This must be a real opportunity for input, not a charade. That doesn't mean that management must always follow the Union's advise but they must listen to and consider the Union's input. If they do decide to revert a vacant duty assignment, management must then post a notice. That notice must indicate that the duty assignment is being reverted and state the reasons for this action.

THE INTERVIEW

- When did you decide to revert Job #12?
- Your letter to local Union President soliciting his input appears to be dated two (2) days after that. Was this just a courtesy to let him know what you were doing?
- Since you had made up your mind beforehand, there really wasn't anything the local President could have said that would have meant anything, was there?
- What specifically were your reasons for reverting this duty assignment?
- What date was the job reverted?

THE DOCUMENTATION

- Assignment change vacating position - showing effective date
- Notice to Union of consideration for reversion and solicitation of input
- Posted notice of reversion
- Local President's statement or interviews about input provided or efforts made to do so
- Supervisor interviews or statements
- PTF / casual workhours (time cards / clock rings) showing work continues to be done
- PTF / casual work schedules
- Witness statements or interviews
- Overtime records

THE AGREEMENT

- National Agreement, Article 37.3.A.2

CHAPTER 27

THE ISSUE: 204-B WORKING BARGAINING UNIT OVERTIME IMMEDIATELY BEFORE OR IMMEDIATELY AFTER 204-B DETAIL

THE DEFINITION

Acting supervisors (204-B's) must not be used in lieu of bargaining-unit employees for the purpose of bargaining-unit overtime.

THE ARGUMENT

The parties have agreed numerous times at Step 4 that employees detailed to 204-B positions will not perform bargaining-unit overtime either immediately before or immediately after such detail unless all available bargaining-unit employees have been utilized. For purposes of determining the beginning and ending of the detail, the PS Form 1723 is controlling. Where a 204-B has been detailed for several weeks, they cannot work in the bargaining unit on their intervening off-days for overtime.

THE INTERVIEW

- Why did 204-B Jensen come back to the bargaining unit last Saturday?
- Did you complete an amended PS Form 1723? Was a copy given to the Union?
- Why didn't you maximize the OTDL before letting Jensen work overtime in the craft?

THE DOCUMENTATION

- PS Forms 1723
- Time cards/clock rings/ETC Report showing bargaining unit overtime for 204-B and availability of OTDL employees

- Overtime authorization (PS Form 1261)
- Witness statements or interviews
- Supervisor interviews or statements
- 204-B interview or statements
- Seniority list
- Overtime desired list
- Applicable qualification records

THE AGREEMENT

- National Agreement, Article 1.6
- National Agreement, Article 8.5
- National Agreement, Article 37.3.A.8