A Production of the Research and Education Department
Joyce B. Robinson, Director

INTERROGATION BY THE OFFICE OF INSPECTOR GENERAL/ INSPECTION SERVICE

Instructor
Percy Harrison, Jr., National Business Agent
Revised August 2006

Introduction

For some reason employees are petrified by the thought of talking to an agent from the Office of Inspector General (OIG) or the Postal Inspection Service. It is the responsibility of the union shop steward to advise the employee of his/her rights under the contract and the law. If questioned by a postal inspector or by agent from the Office of Inspector General, even if the employee believes that he/she is not guilty of any wrongdoing, instruct the employee to:

- Remain calm;
- Correctly identify yourself;
- Request a steward, a union representative or an attorney as appropriate;
- Remain silent until you have consulted with your steward or attorney;
- Don't physically resist arrest or search of your person or property. However, request to see a search warrant. If they do not have one, inform them that you do not consent to the search;
- Ask, "**Am I a suspect in a criminal matter**?" If the answer is, "Yes", the employee should exercise his/her right to remain silent until he/she consults with an attorney;
- Don't sign any papers waiving your rights without consulting with your steward or attorney;
- Do not deny or admit to any allegations without consulting with your steward or attorney, and
- Do not sign any typewritten statements or make oral remarks without consulting with your steward or attorney.

Inform the employee of his/her right to have a union representative present; advise him/her that they must request one. Otherwise, a steward will not be present. Also, advise him/her to beware of the good guy, bad guy routine. One agent or inspector acts as the bad guy; the other as the good guy and tries to con the employee into believing they are trying to help them. Alert them to never fall into the inspectors' trap and to refuse to answer questions unless a steward or attorney is present. **What they say will definitely be used against them.**

In March 2005, the USPS informed the APWU that the investigation of certain types of employee misconduct (internal crimes) was being shifted from the Postal Inspection Service to the Office of Inspector General. Following are correspondence related to the USPS decision.

ATTACHMENT A

JOHN E. POTTER
POSTMASTER GENERAL, CEO

UNITED STATES
POSTAL SERVICE

September 9, 2004

OFFICERS

SUBJECT: Transition of Work from the Inspection Service to the Office of Inspector General

Planning has begun to transfer a portion of the work currently performed by the Inspection Service (IS) to the Office of Inspector General (OIG). The two organizations have been working under a designation of functions crafted when the OIG was established in 1997. We have concluded that there is a need to revisit this agreement for the sake of organizational clarity and to assure that the statutory mandates for both organizations are being fulfilled. We are planning to move appropriate internal crimes work to the OIG to be consistent with Congressional intent. The Inspection Service will focus its efforts on areas of responsibility which Congress has designated as within its exclusive jurisdiction.

The clarification of responsibility and transfer of work will occur over a period of one to two years. To facilitate the transfer, a transition team consisting of representatives of both the Inspection Service and the Office of Inspector General is being established to manage this transfer. Steve Moe, a longtime postal executive who is familiar with the work of both organizations and also has an extensive management background in Human Resources and the Law Department, will lead this team.

During this transition, the OIG and the Inspection Service will take measures to assure quality by collaboration and transfer of knowledge. Every effort will be made to assure a seamless continuity of this important investigative work. You will be informed as plans are finalized for the transfer of work in each area and at headquarters.

John E. Potter

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-0010
WWW.USPS.COM

ATTACHMENT B

ANTHONY J. VEGLIANTE
VICE PRESIDENT, LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

March 22, 2005

Mr. William Burrus
President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Certified Mail Number
7099 3400 0008 5872 9665

Dear Bill:

Please be advised that pursuant to the enclosed memorandum, certain types of work place investigations of employee misconduct are being transitioned to the Office of Inspector General from the Inspection Service. This transition will not restrict, eliminate, or otherwise adversely affect any rights, privileges, or benefits of either employees of the Postal Service, or labor organizations representing employees of the Postal Service, under Chapter 12 of Title 39, United States Code, the National Labor Relations Act, any handbook or manual affecting employee labor relations, or any collective bargaining agreement.

I look forward to your continued cooperation in such matters during the transition.

Sincerely,

Anthony J. Vegliante

Enclosure

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
202-268-7882
FAX: 202-268-3074

ATTACHMENT B2

UNITED STATES
POSTAL SERVICE

February 7, 2005

OFFICERS AND EXECUTIVES

SUBJECT: Transition of Work from the Inspection Service to the Office of the Inspector General

This is a follow-up to the Postmaster General's September 9, 2004, memorandum, which announced that changes would be made in the responsibility for investigating certain internal crimes. This is to inform you of where to direct allegations of potential employee misconduct for investigation.

Effective immediately, allegations of employee embezzlement, record falsification by employees, workers' compensation fraud by postal employees, contract fraud, on-duty employee narcotics violations, and miscellaneous employee misconduct (application falsification, theft of property or services, non-postal crimes, etc.) will be referred to your local Office of Inspector General (OIG) Special Agent in Charge, who will coordinate with the Inspection Service to determine appropriate investigative action.

Allegations involving mail theft will be referred to the Inspection Service, which will maintain responsibility for these investigations.

We are working closely together to make this transition transparent to you. As we shift responsibilities, we will both be accountable for assuring that you see no difference in the service you receive.

Lee R. Heath
Chief Postal Inspector

David C. Williams
Inspector General

cc: Mr. Potter

475 L'Enfant Plaza SW
Washington DC 20260

Important questions from Greg Bell, National Director of Industrial Relations, APWU, AFL-CIO, and answers from the USPS clarifying the responsibilities and functions of the Office of Inspector General and of the Postal Inspection Service as it relates to interrogation of employees.

APWU Questions and USPS Answers
Regarding Office of Inspector General (OIG) Investigations

Q1. The February 7, 2005, memorandum makes reference to the "Postmaster General's September 9, 2004 memorandum, which announced that changes would be made in the responsibility for investigating certain internal crimes."

Please provide a copy of the Postmaster General's September 9, 2004, memorandum announcing the investigation changes.

A1. The Postmaster General's September 9, 2004, memorandum is enclosed. Attachment A.

Q2. The February 7, 2005, memorandum also stated that "effective immediately, allegations of employee embezzlement, record falsification by employees, workers' compensation fraud by postal employees, contract fraud, on-duty employee narcotics violations, and miscellaneous employee misconduct (application falsification, theft of property or services, non-postal crimes, etc.) will be referred to your local Office of Inspector General (OIG) Special Agent in Charge, who will coordinate with the Inspection Service to determine appropriate investigative action."

We have no record of receiving the required notification pursuant to Article 19 of this change. If the required Article 19 notification was provided, please provide confirmation of such notice. If not, why not?

A2. The transition of certain types of investigatory assignments from the Inspection Service to the Office of Inspector General (OIG), as explained in the March 22, 2005, letter to Mr. Burrus, will not restrict, eliminate, or otherwise adversely affect any rights, privileges, or benefits of Postal employees. This transition does not directly relate to wages, hours and working conditions. Therefore, it is the Postal Service's position that Article 19 notification, as defined in the National Agreement was not required. The March 22, 2005, letter is enclosed. Attachment B.

Q3. It has been the parties' historical past practice consistent with applicable regulations, collective bargaining agreements, settlements and memoranda that the law enforcement officers who conduct interrogations of bargaining unit employees regarding criminal matters are the Postal Inspection Service officers. Whereas, management is responsible for handling non-criminal matters in which an employee may be subject to discipline, including discharge. In addition, OIG has oversight responsibilities of activities of the Postal Inspection Service. Please identify the specific regulations that support the Postal Service's decision to replace Inspection Service Officers with OIG Officers to investigate and/or interrogate bargaining unit employees.

A3. The United States Postal Service Office of Inspector General (OIG) was created by Congress in September 1996 by amending the Inspector General Act of 1978 and the Postal Reorganization Act of 1970. The inspector General Act provides that the OIG may conduct audits and investigations in the Postal Service as it considers appropriate. See 5 U.S.C. app. 3 § 8G(f). Investigations of bargaining unit employees fall within the OIG's statutory responsibility to conduct audits and investigations pertaining to the Postal Service and are within the OIG's discretion to conduct.

Q4. The Chief Postal Inspector reports directly to and is under the general supervision of the Postmaster General. Does the Inspector General report to and work under the general supervision of the Postmaster General? Will the OIG also be subject to the same authority of the Postmaster General and the Postal Service's Office of Labor Relations? If not, please explain why not?

A4. The Inspector General does not report to or work under the general supervision of the Postmaster General. The Inspector General Act ensures OIG independence by stating that the Inspector General "shall not report to, or be subject to supervision by, any other officer or employee" of the Postal Service. See Id. § 8G(d).

Q5. Will this transition result in any changes related to how bargaining unit employees are treated, investigated or interrogated by the Postal Inspection Service regarding the above-referenced allegations? If so, please explain how and what impact or effect the transition will have on employees.

A5. The Inspector General Act of 1978, as amended, provides, "nothing in this Act shall restrict, eliminate, or otherwise adversely affect any of the rights, privileges, or benefits of either employees of the United States Postal Service, or labor organizations representing employees of the United States Postal Service, under chapter 12 of title 39, United States Code [39 USC § § 1201 et seq.], the National Labor Relations Act [29 USCS § § 151 et seq.], any handbook or manual affecting employee labor relations with the United States Postal Service, or any collective bargaining agreement." See Id. § 8G(f)(3)(C)(3).

Q6. Please explain the purpose and reasoning behind the changes relating to the transitioning of certain types of workplace investigations to OIG from the Inspection Service.

A6. The transitioning of certain types of investigations from the Inspection Service to the OIG fulfills the OIG's responsibilities under the Inspector General Act.

Q7. Please describe whether the Inspection Service will have any role in investigation of the matters assigned to the OIG concerning bargaining unit employees and, if so, describe what that role will be.

A7. The Inspection Service may have a role in investigations assigned to the OIG, on a case-by-case basis. A Postal Inspector's role would be to refer allegations to the OIG and/or participate in the investigation with the OIG Special Agent.

Q8. Article 17.3 of the APWU National Agreement states that if an employee requests a steward or Union representative to be present during the course of an interrogation by the Inspection Service, such request will be granted. Will OIG comply with this requirement of Article 17.3 during the course of an interrogation?

A8. The OIG will comply with the requirements of Article 17.3 as it relates to an employee request for a steward or Union representative during the course of an interrogation.

Q9. The APWU has a Memorandum of Understanding with the Postal Service concerning the "Role of Inspection Service in Labor Relations Matters." Will this MOU also apply to the OIG, the same as the Inspection Service? If it does not, in whole or in part, please explain which specific parts of the MOU do not apply and why.

A9. The OIG will comply with the MOU entitled, "Role of Inspection Service in Labor Relations Matters."

Q10. Where there have been decisions, settlements, and memoranda of understanding reached through the grievance/arbitration process, the National Labor Relations Board, or the courts that apply to the Postal Inspection Service, will the OIG be obligated and bound those decisions in the same way as the Postal Inspection Service?

A10. Generally speaking, the OIG will comply with those decisions, settlements, and memoranda of understanding that were reached through the grievance/arbitration process, National Labor Relations Board, or judicial process that apply to the Inspection Service. However, without identifying a specific decision, settlement, or memorandum of understanding, a more definitive answer cannot be provided.

Q11. Will OIG investigators comply with employees' Weingarten rights, the same as Postal Inspectors, allowing a union steward to consult with the employee before, and be present during, an OIG interview if requested by the employee?

A11. OIG investigators (Special Agents) will comply with Weingarten rights in

the same manner as Postal Inspectors.

Q12. Will OIG investigators issue or act as the concurring official in discipline issued by the Postal Service in accordance with Article 16 of the APWU National Agreement?

A12. Special Agents will not issue or concur in disciplinary action outlined in Article 16 of the National Agreement.

Q13. Will the OIG recommend and/or mandate that disciplinary action be issued to a bargaining unit employee?

A13. Special Agents will not recommend and/or mandate the issuance of discipline to bargaining unit employees.

Q14. The current official Postal Service form that bargaining unit employees are subject to and may be asked to review or sign during an interrogation is "PS Form 1067, July 1987 - *USPS Postal Inspection Service — Warning and Waiver of Rights.*" However, it has been called to our attention that bargaining unit employees are being asked to review and/or sign unofficial forms during interrogation by OIG Inspectors. Please provide copies of any forms that bargaining unit employees may be asked to review or sign or both during the course of an investigation by the OIG. Among these forms, please provide the primary document authorizing or describing the use of these forms including what has been referred to as "1GM 410 and its attachments."

A14. Enclosed are the investigatory forms the OIG uses during an interrogation. Attachments C, D and E.

Q15. We have received from the field a copy of a form titled "Administrative Warning: Duty to Cooperate" (copy enclosed). Although this form may be included in your response to Question 14, we have no record of this form (which bargaining unit employees are currently being subject to) being authorized as an official Postal Service form, similar to PS Form 1067 which is used by the Postal Inspection Service. It is not clear whether the PS Form number is simply missing from the copy that we have and therefore it is requested that you provide the PS Form number and effective date. It is also requested that you also explain the genesis and intended use of this form.

A15. An employee's duty to cooperate during an official postal investigation is not new. See ELM § 665.3 (formerly ELM § 666.6). The OIG has the authority to use its own forms.

Q16. What effect, if any, is there on the investigatory process or the disciplinary process if an employee refuses to sign the *Administrative Warning: Duty to*

Cooperate or other similar official PS Forms the OIG might use? For example, there have been occasions depending on the fact circumstances where employees have exercised their right not to sign the Postal Inspection Service "Warning and Waiver of Rights" PS-Form 1067.

A16. An employee's refusal to sign the Administrative Warning: Duty to Cooperate does not necessarily trigger an adverse result. It would depend on the circumstances surrounding the refusal on a case by case basis and as determined by management.

Q17. The *"Administrative Warning: Duty to Cooperate"* form indicates that neither an employee's answer, nor any information or evidence which is gained by reason of your statements can be used against you in criminal proceedings. Do OIG investigators have authority to grant immunity from prosecution? If so, please describe the authority. If not, who is authorized to grant immunity from prosecution?

A17. Special Agents do not have authority to grant immunity from criminal prosecution. The Justice Department or an office of the United States Attorney has the authority to grant immunity from criminal prosecution. Provision of the form, "Administrative Warning: Duty to Cooperate," means that the OIG has obtained a waiver of prosecution from the Justice Department or United States Attorney Office.

Q18. If OIG investigators do not grant immunity, how and from whom do they secure immunity from prosecution?

A18. See response to paragraph 17.

Q19. How is an employee who is being interviewed informed of the granting and scope of immunity from prosecution? For example, does OIG contact the appropriate authorizing official first, and get approval to grant immunity from prosecution before offering immunity from prosecution during the interrogation?

A19. Special Agents obtain authorization to offer immunity from criminal prosecution prior to conveying that immunity to an employee.

Q20. Will an employee be allowed legal representation prior to and/or during an OIG investigatory interview?

A20. An employee may invoke their right to counsel in a custodial interrogation.

Q21. Under Miranda v. Arizona, 384 U.S. 436 (1966), before a law enforcement officer may question an individual regarding the possible commission of a

crime, he/she must read to the employee his/her "Miranda Rights" and must also make sure that the individual understands these rights. It is not sufficient to simply inform employees that "neither their answers nor any information or evidence which is gained by reason of their statements can be used against them in criminal proceedings." Such a statement does not relieve the OIG officers of their obligation to advise the employees of their full "Miranda Rights," including the right to remain silent and the right to be represented by counsel. Why is it that the "Administrative Warning: Duty to Cooperate" form does not advise employees of their full "Miranda Rights," including the right to be represented by counsel and the right to remain silent?

A21. When applicable, the Special Agent will advise the employee of his/her Miranda rights. If an employee is not in custody, and is free to leave, the OIG does not provide Miranda rights.

Q22. Can OIG investigators grant employees immunity from administrative disciplinary proceedings that could arise based on the substance of the employees' responses? If so, how will that immunity be conveyed to employees?

A22. It is a management responsibility to determine whether to issue discipline. Special Agents do not have the authority to grant employees immunity from adverse administrative actions.

Q23. Will OIG investigators use other warnings and explanations of employees' legal rights? If so, please specify the warnings or explanations given and their purpose.

A23. The Special Agent will provide Miranda rights when interrogating employees in custodial situations; and either Kalkine or Garrity warnings in non-custodial interrogations.

Q24. Is there a general protocol and/or procedure for the OIG's investigation of allegations? If so, please provide us with that protocol and/or procedure.

A24. The OIG commences investigations after receiving allegations or otherwise discovering apparent wrongdoing. The OIG may produce a report at the end of the investigation.

Q25. Describe the type and/or form number of internal reports generated by the OIG during an investigation. Also, will OIG comply with APWU's right to be provided such information pursuant to Article 17, Section 3 and Article 31 of the National Agreement?

A25. The OIG's report of investigation is similar in substance to the Inspection Service's investigative memorandum. Upon request, the Union will be

provided information consistent with Article 17, Section 3 and Article 31.

Q26. The APWU presently has the right to interview Inspection Service officers regarding investigations that result in or relate to discipline of bargaining unit employees. Will OIG comply with APWU's right to interview OIG Inspectors, the same as Postal Inspectors?

A26. The APWU may have the right to interview Special Agents consistent with the provisions of Article 17 and 31, depending on the circumstances.

Chapter 2 of the Administrative Support Manual (ASM) outlines the responsibilities and functions of the Office of Inspector General and the Postal Inspection Service.

2 Audits and Investigations

21 General

211 Authority

211.1 Responsibility

211.11 Inspector General

The Office of Inspector General (OIG), authorized by law in 1996 as a federal law enforcement and oversight agency, conducts audits and investigations of Postal Service programs and operations, and oversight of the Postal Inspection Service (5 United States Code [U.S.C.] App. 3; 18 U.S.C. 3061; and 39 U.S.C. 404 (a)(7)). The OIG is headed by the inspector general. The inspector general, independent of postal management, is appointed by and reports directly to the nine presidentially appointed Governors of the Postal Service (39 U.S.C. 202).

211.12 Chief Inspector

The Postal Inspection Service, a federal law enforcement agency, conducts audits and investigations of Postal Service programs and operations (18 U.S.C. 3061 and 39 U.S.C. 404 (a)(7)), and is headed by the chief inspector, who reports directly to the postmaster general. The chief inspector acts as security officer and emergency coordinator for the Postal Service and maintains liaison with other investigative and law enforcement agencies of the government, as well as the Federal Emergency Management Agency and other emergency coordinators.

211.13 Designation of Functions

The Governors approved a distribution of duties and responsibilities between the OIG and the Postal Inspection Service to maximize each organization's capabilities and maintain their legislated roles and responsibilities. The designations of functions provide for partnering opportunities, while avoiding duplicative efforts. See Exhibit 211 for a synopsis of the designation of functions.

Exhibit 211
Designation of Functions

Office of Inspector General*	Postal Inspection Service
Audits	
■ Financial statements, including: - Overall opinion audits - Quality reviews of Postal Inspection Service work	■ Financial statements, including installations and districts
■ Postal-wide performance reviews	■ Area, district and local performance reviews ■ Service investigations
■ Contract audits, except pre-award and post-award audits	■ Pre-award and post-award contract audits
■ Developmental audits	
■ Facility audits, including: - Facilities construction contracts of $10 million or more - Right of first choice on contracts valued between $5-10 million - Leases of $1 million or more - Repair and alterations of $1 million or more	■ Facility audits, including: - Facilities construction contracts of $5 million or less - Contracts between $5-10 million not performed by OIG - Leases under $1 million - Repair and alterations under $1 million
■ Revenue-focused audits (international mail)	
Investigations	
■ Revenue cases, including: - Bribery, kickbacks, conflicts of interest - Systemic reviews	■ Revenue cases, including: - Revenue loss detection - Shares with OIG on revenue task force and other groups
■ Workers' compensation cases, including: - Inspector General subpoenas - Program monitoring	■ Primary responsibility for workers' compensation cases
■ Tort claims, including: - Serious incidents - Liability reports	■ Tort claims
■ Embezzlements (conduct/partner on cases of $100,000 or more)	■ Embezzlements under $100,000
■ Expenditure cases, including: - Bribery, kickbacks, and conflicts of interest - Systemic reviews	■ Expenditure cases, including: - Cases referred by OIG - IMPAC card cases - Local purchases or procurements
■ Conduct/partner on cases involving executives	■ Emergency responses on cases involving executives ■ Internal and external crimes ■ Employee protection ■ Security ■ Fraud and prohibited mailings
■ Postal Inspection Service internal affairs: executives	■ Postal Inspection Service internal affairs: non-executives
■ Computer forensics	■ Forensic and technical services
■ Hotline	
Other	
Additional OIG work: ■ Oversight of the Postal Inspection Service ■ Postal rate-making programs and operations ■ Revenue generation ■ Labor management ■ Electronic commerce	

* The Inspector General has oversight responsibility for Postal Inspection Service functions. The Inspector General retains the right to conduct/partner with the Postal Inspection Service on audits and investigations, pursuant to the Inspector General Act.

211.14 Federal Laws and Postal Regulations

211.141 The OIG is responsible for promoting economy, efficiency, and effectiveness, and preventing and detecting fraud, waste, and abuse in all postal programs and operations. The OIG conducts and supervises audits, evaluations, and investigations and keeps the Governors and Congress fully informed of problems and deficiencies and the progress of corrective actions. Under applicable policies, regulations, and procedures, it carries out investigations and presents evidence to the Department of Justice and U.S. attorneys in investigations of a criminal nature.

211.142 The Postal Inspection Service is responsible for protection of the mails, enforcement of federal laws and postal regulations within its jurisdiction as provided in 211.22, plant and personnel security, and coordinating Postal Service emergency preparedness planning of both a wartime and a natural disaster nature. The Postal Inspection Service, under applicable policies, regulations, and procedures, carries out investigations and presents evidence to the Department of Justice and U.S. attorneys in investigations of a criminal nature. In coordination with the OIG, the Postal Inspection Service also performs selected audits and reviews of the Postal Service.

211.2 Arrest and Subpoena Powers

211.21 Authorization

OIG special agents and postal inspectors are authorized to perform the following functions in connection with any matter within their respective official duties as established by the inspector general and the chief inspector:

a. Carry firearms.

b. Serve warrants and subpoenas issued under the authority of the United States.

c. Make arrests without warrant for offenses against the United States committed in their presence.

d. Make arrests without warrant for felonies cognizable under the laws of the United States, if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony.

211.22 Limitations

The powers granted by 211.21 are exercised only in the enforcement of laws regarding property in the custody of the Postal Service, property of the Postal Service, the use of the mails, other postal offenses, and pursuant to any agreements between the attorney general and the Postal Service, in the enforcement of other federal laws, violations of which the attorney general determines have a detrimental effect on the Postal Service.

211.3 Access to Records

211.31 Records and Documents

The OIG and Postal Inspection Service are authorized access to all records and documents of possible relevance to an official audit, evaluation, fact-finding, inspection, investigation, review or other inquiry whether they are in the custody of the Postal Service or otherwise available to the Postal Service by law, contract, or regulation. This includes information about mail sent or received by a particular customer. Exceptions to authorized access are listed in 211.33.

211.32 Disclosure

Information obtained under 211.31 may be disclosed to other postal employees who have a need for such information in the performance of their duties or to any federal, state, or local government agency or unit thereof that needs such information for civil, administrative, or criminal law enforcement. Any such disclosure must be consistent with Postal Service privacy regulations (see Handbook AS-353, *Guide to Privacy and the Freedom of Information Act)*.

211.33 Exceptions

There are no exceptions when an inquiry, such as an investigation, inspection, evaluation, fact-finding, review, or audit is conducted under the authority of the Inspector General Act. Exceptions to the policy of disclosure are the following:

a. For information from the covers of mail, see 213. For dead mail, see the *Domestic Mail Manual.*

b. For access to employee restricted medical records and Employee Assistance Program records, see Handbook EL-806, *Health and Medical Service,* Chapter 2, and *Employee and Labor Relations Manual* (ELM) 870.

c. For access to an employee's Form 2417, *Confidential Statement of Employment and Financial Interests,* see the ELM or 39 CFR 447.42(e)(2).

212 Circulars and Rewards

212.1 Wanted Circulars

The Postal Inspection Service and the OIG issues wanted circulars to help locate and arrest fugitive postal offenders. Post these circulars in the most conspicuous place in the post office lobby and in other prominent places. Post near Poster 296, *Notice of Reward*. Telephone immediately the postal inspector in charge or inspector general with any information on the possible location of the person wanted. Remove and destroy circulars immediately when notified of their cancellation or when the circular is not listed in the periodic *Postal Bulletin* notices of current wanted circulars.

The Supreme Court decision in the *"NLRB vs. Weingarten,"* gives employees the right to have union representation present during investigatory interviews." It is the APWU's position that prior to answering any questions or giving any written or oral statements, the employee should either consult with a Union Representative or attorney, as appropriate.

WEINGARTEN RIGHTS

(Employee's Right to Union Representation)

The right of employees to have union representation at investigatory interviews was announced by the U.S. Supreme Court in a 1975 case (NLRB vs. Weingarten, Inc. 420 U.S. 251, 88 LRRM 2689). These rights have become known as the ***"Weingarten Rights***."

- Employees have ***"Weingarten Rights"*** only during investigatory interviews, when a supervisor questions the employee to obtain information which could be used as a basis for discipline or asks an employee to defend his/her conduct.

- If an employee has a reasonable belief that discipline or other adverse consequences may result from what he/she says, the employee has the right to union representation.

- Management is not required to inform the employee of his/her ***"Weingarten Rights;"*** it is the employee's responsibility to make the request for representation.

When the employee requests a union representative, management has three options:

1. Grant the request and wait until the representative arrives,
2. Discontinue the interview, or
3. Offer the employee the choice of either continuing the interview without a union representative or discontinuing the interview.

- The Postal Inspectors or an agent from the Office of Inspector General will often assert that the only role of a union representative during an investigatory interview is to observe the discussion. The Supreme Court, however, clearly acknowledges a representative's right to assist and counsel employees during the interview.

- The Supreme Court has also ruled that during an investigatory interview management must inform the union representative of the subject of the interrogation. The representative must be allowed to speak privately with the employee before the interview. During the questioning, the steward can interrupt to clarify a question or to object to confusing or intimidating tactics. He/she can not tell the employee what to say, but may advise him/her to stop answering questions and consult with an attorney.

Article 17.3

In the event the duties require the steward leave the work area and enter another area within the installation or post office, the steward must also receive permission from the supervisor from the other area he/she wishes to enter and such request shall not be unreasonably denied.

The steward, chief steward or other Union representative properly certified in accordance with Section 2 above may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied.

While serving as a steward or chief steward, an employee may not be involuntarily transferred to another tour, to another station or branch of the particular post office or to another independent post office or installation unless there is no job for which the employee is qualified on such tour, or in such station or branch, or post office.

If an employee requests a steward or Union representative to be present during the course of an interrogation by the Inspection Service, such request will be granted. All polygraph tests will continue to be on a voluntary basis.

(The preceding Section, Article 17.3, shall apply to Transitional Employees)

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

December 12, 1988

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4107

Dear Bill:

This letter is in response to your correspondence of October 20 regarding a previous letter of inquiry of the U.S. Postal Service's intent to modify its regulations to comply with a National Labor Relations Board's (NLRB) decision in Case 32-CA-4640 (P).

It is the policy of the U.S. Postal Service to comply with its contractual and legal obligations. In Pacific Telephone & Telegraph v. NLRB, 711 F. 2d 134, the Ninth Circuit Court of Appeals (which covers California and several other western states) held that an employee is entitled to consult with his representative prior to an investigative interview. Since preinterview consultation is the law in that circuit, and the U.S. Postal Service's policy is to comply with that law, no policy modifications will be made. The U.S. Postal Service will continue to comply with applicable provisions of the National Agreement, with regard to this matter, in installations not covered by the Ninth Circuit Court.

Sincerely,

for William J. Downes
Joseph J. Mahon, Jr.
Assistant Postmaster General

An employee, who may have witnessed an occurrence, has a right to have a shop steward present during an interrogation by an agent of the Office of Inspector General and/or Postal Inspectors.

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

April 24, 1986

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Burrus:

Recently, you met with Sherry Cagnoli, Office of Labor Law, in prearbitration discussion of case number H1C-NA-C 96, Washington, D.C. The parties mutually agreed to a full and final settlement of this case as follows:

> The parties agree that the right to a steward or union representative under Article 17, Section 3 applies to questioning of an employee who has or may have witnessed an occurrence when such questioning becomes an interrogation.

Please sign and return the enclosed copy of this letter acknowledging your agreement to settle this case, and withdrawing H1C-NA-C 96 from the pending national arbitration listing.

Sincerely,

George S. McDougald
General Manager
Grievance and Arbitration
Division
Labor Relations Department

Enclosure

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

4-24-86
(Date)

The role of the Union steward during interrogation by the Office of Inspector General and/or the Postal Inspectors is to clarify the facts, assist the employee in articulating an explanation and to advise the employee when to remain silent and to consult with an attorney.

ROLE OF THE STEWARD DURING AN INTERROGATION

It is important that the steward recognizes both his/her role and the rights of the employee during the interrogation process.

Postal employees are subject to investigation by either the Office of Inspector General (OIG) or the Postal Inspection Service for off duty as well as on duty offenses. Generally, off duty non postal offenses, subject to investigation includes, but are not limited to:

- **Serious acts of criminal violence;**
- **Use of fire arms or dangerous weapons in the commission of a crime;**
- **Grand larceny, burglary, embezzlement, or robbery, and**
- **Sale or possession of narcotics or dangerous drugs.**

Article 17, Section 3 of the Collective Bargaining Agreement states, **"If an employee requests a steward or Union representative to be present during the course of an interrogation by the Inspection Service, such request will be granted. All polygraph tests will continue to be on a voluntary basis**."

During an interrogation by the Inspection Service, it is most important that the union steward or representative recognize his or her role. He/she should not allow either an agent of the Office of Inspector General (OIG) or the Postal Inspection Service to limit his/her participation to that of a passive observer.

Although a steward should not turn the interrogation into an adversarial proceeding and prevent the inspectors and/or agents from questioning the employee, the steward should nonetheless advise and actively assist the employee. He/she should attempt to clarify the facts and assist the employee in articulating an explanation. The steward may ascertain whether the employee is under arrest and/or whether the employee is the subject of a criminal investigation or is a suspect in a crime.

In situations where a steward or Union representative believes an employee may be the subject of a criminal investigation and/or there are legal issues that need to be addressed, he/she may advise the employee to remain silent and not to sign any statements/forms until they have consulted with legal counsel.

CHIEF POSTAL INSPECTOR
Washington, DC 20260

May 24, 1982

Mr. William Burrus
General Executive Vice President
American Postal Workers Union, AFL-CIO
817 14th Street, N.W.
Washington, DC 20005

Dear Mr. Burrus:

This replies to your May 10, 1982, letter to Senior Assistant Postmaster General Joseph Morris concerning the role of stewards or union representatives in investigatory interviews. Specifically, you expressed concern that the Inspection Service has adopted a policy that union representatives be limited to the role of a passive observer in such interviews.

Please be assured that it is not Inspection Service policy that union representatives may only participate as passive observers. We fully recognize that the representative's role or purpose in investigatory interviews is to safeguard the interests of the individual employee as well as the entire bargaining unit and that the role of passive observer may serve neither purpose. Indeed, we believe that a union representative may properly attempt to clarify the facts, suggest other sources or information, and generally assist the employee in articulating an explanation. At the same time, as was recognized in the Texaco opinion you quoted, an Inspector has no duty to bargain with a union representative and may properly insist on hearing only the employee's own account of the incident under investigation.

We are not unmindful of your rights and obligations as a collective bargaining representative and trust that you, in turn, appreciate the obligations and responsibilities of the Inspection Service as the law enforcement arm of the U. S. Postal Service. In our view, the interests of all can be protected and furthered if both union representative and Inspector approach investigatory interviews in a good faith effort to deal fairly and reasonably with each other.

Sincerely,

E. H. Fletcher

If an agent from the Office of Inspector General or the Inspection Service fails to permit the presence of a steward during an interrogation or fails to respect the role of the steward, both the Local Union and the individual employee who is the subject of the interrogation can file an unfair labor practice charge with the NLRB.

FAILURE TO HONOR AN EMPLOYEE'S REQUEST FOR A STEWARD DURING AN INTERROGATION

If an agent from the Office of Inspector General or the Inspection Service fails to permit the presence of a steward during an interrogation or fails to respect the role of the steward, both the Local Union and the individual employee who is the subject of the interrogation can file an unfair labor practice charge with the NLRB. It is recommended that separate charges be filed.

To file a successful claim, the employee must make it clear, both during the interrogation and again to the NLRB, that he/she requested the assistance of a union representative. The employee can claim a violation of Section 8(a)(1) of the National Labor Relations Act. **The body of such a charge filed by an employee should allege that:**

> "On or about insert date, the U.S. Postal Service interfered with, restrained and coerced _____, an employee of th USPS, in the exercise of his/her Section 7 rights by, among other things, failing and refusing to permit the presence and/or participation of a union representative during the course of an interrogation by the Employer in violation of the law," (See ***NLRB v. Weingarten***, 420 U.S. 251 (1975) and ***Barnard College***, 340 NLRB No. 934 (2003).

The Local Union should claim a violation of Section 8(a)(1) and (5) of the National Labor Relations Act, alleging:

> "On or about insert date, during the interrogation of Jane Doe, employee of the U.S. Postal Service, the Employer refused to permit _____, APWU Union's steward's, participation in the interview even though the employee requested to have a steward present. This is a direct violation of the Postal Service's legal and contract obligations, (See ***NLRB v. Weingarten***, 420 U.S. 251 (1975) and ***Barnard College***, 340 NLRB No. 934 (2003).

In *Kalkines v. United States*, 473 F.2d 1391, 1393 (Ct. Cl. 1973), the U.S. Court ruled that an employee can be asked to, "answer pertinent questions about the performance of an employee's duties ... when that employee is duly advised of his/her options to answer under the "immunity granted" or "remain silent and face dismissal." It is the APWU's position that prior to answering any questions or giving any written or oral statements, the employee should either consult with a Union Representative or attorney, as appropriate.

KALKINES WARNING

The ***"GarrityRights,"*** stated above, does not, however, mean that government employees may not be asked to give a statement about potentially criminal acts. In ***Gardner v. Broderick***, 392 U.S. 273 (1968), the United States Supreme Court held that the government may not discharge a public employee for refusing to waive his or her constitutional rights.

- The Court noted that the government could discipline an employee if it does not force the employee to give up his Fifth Amendment rights, such as by giving the employee prosecutorial immunity (a guarantee that the information disclosed will not be used against the employee in a criminal prosecution).

- The Supreme Court also found, in ***Uniformed Sanitation Men Association v. Commissioner of Sanitation***, 392 U.S. 280, 285 (1968), that public employees "subject themselves to dismissal if they refuse to account for their performance of their public trust, after proper proceedings, which do not involve an attempt to coerce them to relinquish their constitutional rights."

- In ***Kalkines v. United States***, 473 F.2d 1391, 1393 (Ct. Cl. 1973), the U.S. Court of Claims elaborated on the Supreme Court's holdings in finding that an employee can be asked to "answer pertinent questions about the performance of an employee's duties ... when that employee is duly advised of his options to answer under the immunity granted or remain silent and face dismissal." In other words, an employee who is given prosecutorial immunity should not expect to rely on his Fifth Amendment rights as a reason not to answer questions, and if he does not answer the questions the government may discipline him for failing to cooperate with the investigation.

- This rule is based on the Fifth Amendment's prohibition on governmental compulsion to make an individual disclose information that might be used against them in a criminal proceeding. It is counter balanced by the Supreme Court's holdings that the government has the right to have its employees answer questions about the performance of their official duties.

- In getting this information from employees, the Fifth Amendment is not violated so long as the government also grants the employee immunity from criminal prosecution based upon that information. If an employee is given immunity, but nonetheless decides not to answer questions, the government may discipline the employee for not answering the questions.

- Any such discipline would, of course, be subject to the grievance procedure pursuant to the collective bargaining agreement. Therefore, an employee can always decide whether to answer questions or not to answer questions.

- As regards the "***Kalkines Warning***," for example, if an employee is actually provided immunity from prosecution, the employee nonetheless may choose not to answer questions and instead deal with the consequences of being disciplined.

- It should be noted that the mere assertion by an agent from the Office of Inspector General that an employee is being granted "immunity" is not the same as an actual grant of immunity from a prosecutor.

- Questions regarding possible criminal prosecution, custodial vs. non-custodial interrogations, and immunity, are legitimate questions that may best be addressed by an attorney.

- There is no violation of any Postal Service policy or regulation if an employee who is being subject to an interrogation by law enforcement agents of the Postal Service chooses to remain silent pending consultation with a Union representative and/or an attorney.

- In addition, there is no such violation if an employee chooses not to sign any forms or statements during an interrogation.

UNITED STATES POSTAL SERVICE
OFFICE OF INSPECTOR GENERAL
1735 NORTH LYNN STREET
SUITE 10000
ARLINGTON, VA 22209-2020

ATTACHMENT C

ADMINISTRATIVE WARNING: DUTY TO COOPERATE

_____1. You are going to be asked a number of specific questions concerning the performance of your official duties as an employee of the United States Postal Service.

_____2. You have a duty to reply to these questions. Agency disciplinary proceedings, including your dismissal, may be initiated if you refuse to answer or fail to reply fully and truthfully.

_____3. Neither your answers nor any information or evidence which is gained by reason of your statements can be used against you in criminal proceedings; except that you may be subject to criminal prosecution for any false oral or written answers made by you during the course of this interview.

_____4. YOU ARE SUBJECT TO DISCIPLINARY ACTIONS UP TO AND INCLUDING DISMISSAL IF YOU REFUSE TO ANSWER OR FAIL TO RESPOND TRUTHFULLY AND FULLY TO ANY QUESTIONS, OR GIVE MISLEADING INFORMATION.

acknowledgement

I have read the above warning or had it read to me, and I understand my rights. I have been advised of the nature of the inquiry and I am willing to discuss the subject(s) presented to me. No promises, threats, or coercion of any kind have been made against me. I know and understand what I am doing.

Date	Time	Signature
		Print Name

Investigator	Date	Time
Witness	Date	Time

Employees subjected to a criminal investigation by the Office of Inspector General and/or the Postal Inspection Service must be given his/her "*Miranda Rights*." It is the APWU's position that prior to answering any questions or giving any written or oral statements, the employee should either consult with a Union Representative or attorney, as appropriate.

MIRANDA RIGHTS

(Your Right to Remain Silent)

In Miranda v. Arizona, 384 U.S. 436 (1966), the Supreme Court's historic decision, the Court ruled that before a law enforcement officer may question an individual regarding the possible commission of a crime, he/she must read the individual his/her ***"Miranda Rights"*** and must also make sure that the individual understands these rights. Therefore, law enforcement agencies have created a basic set of simple statements that can be read to accused persons prior to questioning.

- **You have the right to remain silent and refuse to answer questions.** The individual must be informed in clear and unequivocal terms that he/she is not legally required to answer questions or to give a statement.

- **Anything you say may be used against you in a court of law.** The individual must be warned of the consequences of his/her statements.

- **You have the right to consult with an attorney before speaking to us and to have an attorney present during questioning now or in the future.** The right to have an attorney present during the interrogation is a protection of the individual's Fifth Amendment privileges.

- **If you desire to have an attorney present and cannot afford one, an attorney will be appointed to you, free of charge.** Without this additional warning, the individual's right to consult with an attorney would only apply if he/she has the funds to obtain one.

- **Do you understand your rights as I have read them to you?** The individual answers yes or no.

- **Knowing and understanding your rights as I have read them to you, are you willing to answer my questions without an attorney present?** If the individual says no, the questioning must stop. The individual should refuse to answer any questions, until the attorney is present.

However, the law enforcement officer is allowed to ask routine questions without reading the individual his/her "***Miranda Rights,***" such as: What's your name, address, date of birth, and Social Security number. This information may be necessary to help determine a person's true identity.

UNITED STATES POSTAL SERVICE
OFFICE OF INSPECTOR GENERAL
1735 NORTH LYNN STREET
SUITE 10000
ARLINGTON, VA 22209-2020

ATTACHMENT D

MIRANDA RIGHTS

I, _____, have been advised by Special Agent _____, who has identified himself/herself to me as a Special Agent of the United States Postal Service, Office of Inspector General, that he/she is conducting a criminal investigation.

I have also been advised that:

_____ 1. **I have the right to remain silent;**

_____ 2. **Any statement I make can be used as evidence against me in a court of law;**

_____ 3. **I have the right to consult with an attorney prior to and during any questioning;**

_____ 4. **If I cannot afford an attorney, one will be appointed to me by the court without cost, prior to any questioning;**

_____ 5. **I have the right to request an attorney at any time during this interview; and**

_____ 6. **I have the right to terminate this interview at any time, for any reason.**

I have read my rights or had them read to me as set forth above and I understand my rights. With this understanding, I am willing to make a statement and answer questions. I do not wish to consult with an attorney at this time, and I do not wish to have an attorney present during this interview. I make this decision freely, knowingly, and voluntarily, and without any threats, promises, or coercion of any kind being made against me.

Signature: _____

Date & Time: _____

Investigator: _____

Date & Time: _____

Witness: _____

Developed through a series of United States Supreme Court cases, *"Garrity Rights,"* provides: that if a person is coerced into disclosing information, that he/she believes may be used in a criminal prosecution against himself/herself, that information is inadmissible in court." It is the APWU's position that prior to answering any questions or giving any written or oral statements, the employee should either consult with a Union Representative or attorney, as appropriate.

GARRITY RIGHTS/WARNING

The Fifth Amendment to the U.S. Constitution provides that no person shall be compelled in any criminal case to be a witness against himself. This means that a person may not be required or coerced to disclose any information that he or she reasonably believes may be used (or lead to other evidence that may be used) in a criminal prosecution against him or her.

- If a person is coerced into disclosing information, that information is not admissible in court against him or her.

- In addition to the basic Fifth Amendment rights, Postal Service employees have additional rights under the Fifth Amendment as public sector employees. These workplace rights arise because in the public sector the government acts as both law enforcement agency and employer.

- Developed through a series of United States Supreme Court cases beginning in 1966, these rights are generally known as "***Garrity Rights***," after the Supreme Court's decision in ***Garrity v. New Jersey***, *385 US 493 (1967).*

- In that case, several New Jersey police officers were targeted during an internal investigation of ticket fixing. The officers were told that they must respond to questions during the investigation or face discharge for insubordination. In order to keep their jobs, the officers complied and answered the questions. The statements made by the officers were then used in criminal prosecutions against them.

- In overturning the convictions, the Supreme Court held that threatening the police officers with discharge was coercive -- in violation of the Fifth Amendment.

This case now stands for the principle that using the threat of discharge or any other substantial economic penalty against public sector employees during an investigation of potentially criminal matters is coercive and that any consequent disclosure is inadmissible in a criminal trial of the employee.

UNITED STATES POSTAL SERVICE
OFFICE OF INSPECTOR GENERAL
1735 NORTH LYNN STREET
SUITE 10000
ARLINGTON, VA 22209-2020

ATTACHMENT E

ACKNOWLEDGEMENT OF RIGHTS

I, _____, have been advised by Special Agent _____, who has identified himself/herself to me as a Special Agent of the United States Postal Service, Office of Inspector General, that he/she is conducting an investigation into a matter affecting my official duties.

In connection with this, I have been advised that:

_____1. I have the right to remain silent if my answers may tend to incriminate me.

_____2. Anything I say or do may be used as evidence in administrative proceedings, civil proceedings, or any future criminal proceeding involving me.

_____3. If I refuse to answer the questions posed to me on the grounds that the answers may tend to incriminate me, I cannot be discharged solely for remaining silent.

_____4. However, my silence can be considered in an administrative proceeding for its evidentiary value that is warranted by the facts surrounding my case.

_____5. This interview is strictly voluntary and I may leave at any time.

I have read the Acknowledgement of Rights or had them read to me and I understand them as set forth above.

Signature: _____

Date & Time: _____

Investigator: _____

Witnessed: _____

Place: _____

The union steward should warn employees not to sign the attached Warning and Waiver of Rights PS Form 1067.

UNITED STATES POSTAL INSPECTION SERVICE

WARNING AND WAIVER OF RIGHTS

Place: _____

_____

Date: _____ Time: _____

WARNING

BEFORE YOU ARE ASKED ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.

- You have a right to remain silent.
- Anything you say can be used against you in court.
- You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.
- If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.
- If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

I have read this statement of my rights (This statement of my rights has been read to me) and I understand what my rights are.

_____ _____ _____

(Date) (Time) (Signature)

WAIVER

I am willing to discuss subjects presented and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

_____ _____ _____

(Date) (Time) (Signature)

Witnessed by: _____

Title: _____

Witnessed by: _____

Title: _____

PS Form 1067, July 1987

Once the investigation is completed, an agent of the Office of Inspector General and/or a Postal Inspector completes an Investigative Memorandum and sends it, along with all exhibits relating to the investigation, to the appropriate postal official.

Sample Copy of an Investigative Memorandum

UNITED STATES POSTAL INSPECTION SERVICE
WASHINGTON DIVISION

July 28, 2004

Tom Jones
Postmaster
United States Postal Service
Anytown Post Office
P. O. Box 999
Anytown, USA 00000-9999

Subject: CASE NO.: 0956-9701297-F1(2)
Anytown, USA: Investigation into the Conduct of John Doe, Part-Time Regular Clerk, Anytown Post Office, Anytown, USA 00000-9999

Herewith is an Investigative Memorandum and Exhibits relating to the conduct of John Doe, Full-Time Regular Clerk, Anytown Post Office, Anytown, USA 00000-9999.

Due to the nature of the circumstances, the facts presented herein were verbally discussed with you on July 15, 2004. This information is submitted for your consideration and decision as to whether any administrative and/or collection action is warranted. This Inspection Service is not authorized to make decisions concerning administrative or collection action.

Please advise me, in writing, within thirty (30) days, of your decision in this matter. If you decide to initiate disciplinary action, please furnish me with a copy of the letter to the employee and your final decision letter. Additionally, if your original decision is subsequently modified in any way, as a result of a grievance, appeal or arbitration proceeding, please advise me of the final results of the action taken. If any type of hearing is required; I will be available to testify concerning this investigation. Please advise me at least two (2) weeks in advance of any scheduled hearing.

John Shaft
John Shaft
Postal Inspector

In accordance with the attached Memorandum of Understanding in the Collective Bargaining Agreement, Postal Inspectors are not allowed to make recommendations, provide opinions, or attempt to influence management regarding disciplinary action. This also applies to agents of the Office of Inspector General.

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

Re: Role of Inspection Service in Labor Relations Matters

The parties recognize the role of the Postal Inspection Service in the operation of the Postal Service and its responsibility to provide protection to our employees, security to the mail and service to our customers.

Postal Inspection Service policy does not condone disrespect by Inspectors in dealing with any individual. The Postal Inspection Service has an obligation to comply fully with the letter and spirit of the National Agreement between the United States Postal Service and the American Postal Workers Union, AFL-CIO and will not interfere in the dispute resolution process as it relates to Articles 15 and 16.

The parties further acknowledge the necessity of an independent review of the facts by management prior to the issuance of disciplinary action, emergency procedures, indefinite suspensions, enforced leave or administrative actions. Inspectors will not make recommendations, provide opinions, or attempt to influence management personnel regarding a particular disciplinary action, as defined above.

Nothing in this document is meant to preclude or limit Postal Service management from reviewing Inspection Service documents in deciding to issue discipline.

* * *

The shop steward should always conduct a thorough investigation.

INFORMATION TO REQUEST PRIOR TO FILING THE GRIEVANCE

Prior to filing the grievance, it is imperative that the steward see and hear all available evidence and documents relied upon to issue the proposed suspension or discharge. Therefore, he/she should:

1. Request a copy of:

    A. The investigative memorandum,
    B. Affidavits, and
    C. All exhibits and/or materials relied upon to issue the discipline.

2. View all video tapes;
3. Listen to all audio tapes;
4. Question all witnesses, including confidential informers, managers, supervisors, postmasters, officers in charge and postal inspectors.

Careful attention should be directed to all the evidence gathered and to all procedural errors listed in the advanced notices of disciplinary action such as but not limited to, conflicting dates, times or witness statements and admission by the management official that he or she did not conduct an investigation and relied solely on the Postal Inspection Service Investigative Memorandum to issue the notice of disciplinary action.

Frequently, as a result of an off duty arrest and the investigative memorandum furnished by the Postal Inspection Service, the employee may receive disciplinary action which is initiated before the case is adjudicated in a court of law. Therefore, the shop steward should make sure the grievance is processed in a timely manner at all steps of the grievance procedure. The employee may be exonerated of the charges, and reinstated.

The shop steward has a right to interview agents of the Office of Inspector General and/or Postal Inspectors.

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

JUL 2 2 1988

Re: Class Action
Orlando, FL 32862
B4C-3W-C 51710

Dear Mr. Connors:

On June 14, 1988, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management properly denied the steward's request to interview postal inspector.

In full settlement of this grievance, we mutually greed to the following:

> The Postal Service agrees that a steward who is processing and investigating a grievance shall not be unreasonably denied the opportunity to interview Postal Inspectors on appropriate occasions, e.g., with respect to any events actually observed by said inspectors and upon which a disciplinary action was based.

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

Time limits were extended by mutual consent.

Sincerely,

for [signature]
Joyce Ong
Labor Relations Department

[signature]
James Connors
Assistant Director
Clerk Craft Division
American Postal Workers Union,
AFL-CIO

The shop steward has the right to refuse to disclose information which was obtained during the course of the performance of his/her duties as a Union steward.

STEWARD'S RIGHT TO REFUSE TO DISCLOSE INFORMATION

A demand by the Postal Service to interrogate union stewards concerning information communicated to them by employees they represent in their capacity as union stewards constitutes a violation of the National Labor Relations Act. These demands which carry threats of discipline, if the steward does not cooperate, are clearly demands to interrogate employees about their union activities.

In these circumstances, the Local should file an unfair labor practice charge against the Postal Service alleging violations of Section 8(a)(1). Those Locals should also ask for injunctive relief under Section 10(j) of the National Labor Relations Act: The damage done by such a demand is irreparable because of the ongoing chilling effect that it has both on an employee's willingness to consult stewards, and on the willingness of employees to serve as stewards. Such harm cannot he repaired with an eventual NLRB cease-and-desist order. For this same reason, the charge should not be deferred to arbitration. The Local should cite ***Cook Paint and Varnish Co.***, 258 NLRB 1230 (1981) when contacted by the Board Agent. **Such a charge should allege as follows:**

> "On or about insert date, the U.S. Postal Service interfered with, restrained and coerced _____, employees of the USPS, in the exercise of their Section 7 rights by, among other things, demanding under threat of discipline that union officials submit to interrogations about their union activities. Injunctive relief under Section 10(j) is requested."

SPECIAL NOTE: Although APWU stewards enjoy a qualified privilege as stated by the Board in ***Cook Paint and Varnish Co.***, as employees of the Postal Service, they also have an obligation to cooperate with employer investigations in judicial proceedings. Should a steward be subpoenaed to testify before a grand jury or in court, a steward may well be held in contempt if he/she refuses to testify based upon the NLRB privilege for union stewards spoken of above.

However, the National Union contends that the **"steward's privilege"** does apply in the context of investigatory interviews by Postal Inspectors or the Office of the Inspector General. Therefore, if requested to supply this type of information send the letter on the following page by certified mail, return receipt requested.

Often an agent of the Office of Inspector General or a Postal Inspector, will attempt to solicit testimony from the shop steward. The shop steward should refuse to submit a written or oral statement and mail, a copy of the sample letter (enclosed below), by certified mail, return receipt requested.

SAMPLE LETTER TO THE OFFICE OF INSPECTOR GENERAL AND/OR POSTAL INSPECTORS DEMANDING TESTIMONY FROM STEWARDS

Dear _____:

I am writing in response to your request that I provide you a formal statement concerning the actions of grievant _____, who is the subject of a removal action by the United States Postal Service.

Because the information you are seeking was obtained by me in the course of the performance of my duties as a Union steward, I consulted a National Officer of the American Postal Workers Union AFL-CIO concerning my responsibilities. I have been advised by APWU, and by the National Union's General Counsel's Office, that I may not lawfully be asked to disclose information obtained by me in the course of my performance of my duties as a steward.

Under decisions of the National Labor Relations Board, particularly ***Cook Paint and Varnish Co.***, 258 NLRB 1230 (1981), stewards may not lawfully be asked by employers to give testimony against individuals based upon information obtained by stewards in the performance of their duties as stewards.

Accordingly, I respectfully refuse to provide you the evidence you are seeking against the grievant, as it would be inappropriate for me to provide you a statement in this matter.

Sincerely,

Synopsis of decisions rendered by the National Labor Relations Board on the rights of a Union steward to refuse to give testimony against the grievant.

REPORT OF THE GENERAL COUNSEL

This report covers selected cases of interest that were decided during the period from March through September 30, 1994. It discusses cases which were decided upon a request for advice from a Regional Director or on appeal from a Regional Director's dismissal of unfair labor practice charges. It also summarizes cases in which I sought and obtained Board authorization to institute injunction proceedings under Section 10(j) of the Act.

Frederick L. Feinstein
General Counsel

Discipline of Union Steward for Refusing to Cooperate with Employer Investigation

In another case considered during this period, we concluded that an employer could not lawfully discipline a union steward for refusing to provide it with a written account of an employee's conduct witnessed as a result of her performance of her duties as steward.

The Employer's plant manager had requested the steward to attend a meeting, along with an employee and the employee's supervisor, concerning possible discipline of the employee. At the end of the meeting the employee was terminated and the group left the office. As they walked into the adjoining hall, the employee allegedly told the plant manager that he was "a rotten, no good bastard, [and if the employee] had his money right now [he'd] drag [the manager] outside and kick his _____." The plant manager told the supervisor and the steward that he wanted statements from them setting forth what the employee had said. When the steward objected she was advised that she would be subject to discharge if she did not provide the statement. The steward thereupon submitted the statement as directed.

We concluded that the threat of discharge unlawfully interfered with the individual's protected right to serve as union steward. Although the discharged employee's intemperate remarks may not have been protected, the steward would never have witnessed the outburst but for her role as steward. The outburst, which occurred as the parties were leaving the plant manager's office, was not viewed as separable from the events for which the steward's attendance had been required, but rather, was considered as part of the "res gestae of the grievance discussion." Cf., Thor Power Tool Company, 148 NLRB 1379, 1380 (1964), enf'd., 351 F.2d 584 (7th Cir. 1965). Further, even if the disciplinary meeting were found to have ended prior to the outburst, the steward's role was considered a continuous one, inasmuch as the discharged employee still had a right to file a contractual grievance protesting his discharge, and the steward would likely be involved in that process. It was therefore concluded that the threat occurred during a time when the individual was acting as steward.

Further, the threat was deemed to have a chilling effect on the steward's right to represent the dischargee and other employees in an atmosphere free of coercion. A requirement that stewards, under threat of discharge, prepare written reports on the conduct of employees they have been requested to represent, clearly compromises the steward's obligation to provide, and an employee's right to receive, effective representation. Employees will be less inclined to vigorously pursue their grievances if they know

that the employer can require their representative to prepare reports on their conduct at such meetings, including spontaneous outbursts which may or may not be protected. The Board has also recognized that employer efforts to dictate the manner in which a union must present its grievance position may have a stifling effect on the grievance machinery and could "so heavily weigh the mechanism in the employer's favor as to render it ineffective as an instrument to satisfactorily resolve grievances." Hawaiian Hauling Service, Ltd., 219 NLRB 765, 766 (1975), enf'd., 545 2d 674 (9th Cir. 1976) (employee discharged for calling the general manager a liar during a grievance meeting on the employee's prior discipline.) By placing the steward under threat of discharge if she refused to supply the statement the Employer was deemed to have stifled vigorous opposition to its grievance/discipline decisions and to have heavily weighted the grievance process in its own favor.

While acknowledging that a union steward does not enjoy absolute immunity from employer interrogation, the Board, in its decision on remand in Cook Paint and Varnish Co., 258 NLRB 1230 (1981), held that an employer had unlawfully threatened to discipline a steward for refusing to submit to a pre-arbitration interview and refusing to make available notes taken by the steward while processing the grievance that was being arbitrated. The Board noted that the steward had not been an eyewitness to the events, and that his involvement occurred solely as a result of his processing the grievance as union steward. The Board then noted that the notes sought by the employer were the substance of conversations between the employee and the steward, and that such consultations were "protected activity in one of its purest forms." The Board concluded that to allow the employer to compel disclosure of such information under threat of discipline manifestly restrained employees in their willingness to candidly discuss matters with their representative. The Board added that such employer conduct cast a chilling effect over all employees and stewards who seek to communicate with each other over potential grievance matters and also inhibited stewards in obtaining needed information since the steward would know that, upon demand of the employer, he would be required to reveal the subject of his discussions or face disciplinary action himself.

We concluded that while there were factual differences, Cook Paint is consistent with a finding that the Employer's threat to the steward in the instant case violated the Act. Thus, while Cook Paint involved employer attempts to discover the contents of employee communications to a steward, both cases involve the sensitivity of a steward's status vis-à-vis the employees he/she represents. Thus, like the steward in Cook Paint, the steward herein was not involved in the misconduct that was the subject of the meeting or that occurred immediately thereafter, was present solely because of her status as steward, and was compelled under threat of discharge to provide a written account of an event to which there were other witnesses, making her version merely cumulative. If an Employer were permitted to threaten stewards with discipline for failing to cooperate in employer investigations in circumstances such as these, it would place a steward in a position of sharp conflict of interests, having to choose between protecting his job and providing effective and strenuous representation to the employee he was chosen to represent.

Accordingly, we authorized the issuance of an appropriate Section 8(a)(1) complaint.

Synopsis of Arbitration Awards on Inspector's Investigative Memorandums.

SYNOPSIS OF ARBITRATION AWARDS ON INSPECTOR'S INVESTIGATIVE MEMORANDUMS

Case # A90C-1A-D 95013357
Arbitrator George R. Shea, Jr.

Arbitrators on the parties arbitration panel, including this Arbitrator, have held that the Service may properly rely on the investigatory expertise of the Inspection Service to conduct an investigation within the Inspection Service's specialization. The Arbitrator determines that the investigation of prior criminal proceedings, as part of a background check of an employee's employment application, is within that expertise and specialization. However, the service, and not the Inspection Service, has the contractually responsibility to make the employment decision to impose discipline on an employee of the Postal Service and to determine the nature and severity of that discipline. Similarly, the service, as the disciplinary authority, has the responsibility of conducting the disciplinary process in accordance with the requirements of the Agreement and the just cause standard, including providing the disciplined employee with an opportunity of a pre-discipline interview with the person making the decision to discipline.

Case # 37C-3D-D 38401
Arbitrator Charlotte Gold

Any Supervisor who relies solely on the findings of the Inspection Service does so at his or her own peril. Postal Management has the responsibility of conducting a full investigation of any actions that may result in the assessment of discipline. An IS report is just one element of factor that must be weighted and it cannot be presumed to be accurate or true without independent analysis. Such an investigation should include an interview with the employee who is to be charged, to obtain and weigh his or her side of the story. In this instance, Postal Management made no effort to speak with the Grievant until discipline was already accessed.

There is an extensive body of arbitral decisions in the Postal Service that adopts the position that reliance solely on the Inspection Service's Memorandum is a violation of the just cause principle. Just cause for discipline is a basic requirement of the National Agreement and Arbitrators have found that the failure to abide by this important principle constitutes grounds for overturning discipline. It is essential that subsequent decisions on Investigative Memorandums endorse this concept so that the parties come to learn what is expected of them and there is predictability in arbitral decision making.

Cases # C7C-4L-D 30219 & C7C-4L-D 31295
Arbitrator Charles E. Krider

The Postal Service contends that the grievant in this case was adequately interviewed by the Postal Inspector and that an additional interview by the supervisor is not required. I disagree. The supervisor may obviously rely on the Investigative Memorandum prepared by a Postal Inspector, including any statement signed by the employee. But the supervisor has a different role than that of a Postal Inspector. The supervisor must be satisfied that all appropriate questions have been asked and the employee has been given a full opportunity to present his side. The supervisor must also be satisfied the Investigative Memorandum accurately relates the events from the employee's perspective. The Postal Inspector has no responsibility for determining just cause and there is no assurance that an Inspector will conduct a full interview that provides a basis for a just cause termination.

Case # SOC-3E-D 7907
Arbitrator George V. Eyraud, Jr.

The Union complains that the Service did not fully investigate the matter; that they based their actions entirely on the investigative memo of the inspection service which was violative of due process. This appears to be good argument. The evidence shows that Grievant was not interviewed by Management prior to the institution of the indefinite suspension. It is no answer that they could not recreate the facts. Management can never recreate the facts. Grievant should have been interviewed prior to receipt of the indefinite suspension. Management failed to show a reasonable and adequate attempt to interview Grievant.

Cases # S4C-3S-D 53003 & S4C-3S-D 53002
Arbitrator Ernest E. Marlatt

One must ask this embarrassing question: who is causing the United States Postal Service the greater harm, the window clerk who steals forty cents every time she takes in a parcel, or the Labor Relations Representative who knowingly allows a supervisor to fire an employee without going through the formality of the mandatory pre disciplinary interview, thus incurring thousands of dollars in liability for back pay due to the procedurally defective disciplinary action?

It is clear from these decisions that an investigation of a possible violation of Postal laws and regulations by the Inspection Service is not in any way an acceptable substitute for the immediate supervisor's own inquiry into the equities of the case.

To a Postal Inspector, an employee with thirty years service and a dozen superior performance awards who steals a .22 cents stamp is simply a thief who has misappropriated Postal property. It is entirely proper for the Inspector to look at it this way.

But the supervisor in deciding whether to take corrective disciplinary action must consider not only the offense but also all mitigating and extenuating circumstances and the likelihood that the employee can be rehabilitated into a productive and trustworthy member of the Postal team. It may be true that some supervisors lack the experience and mature judgement to reach a just and fair decision as to what should be done, but this fact does not mean that the supervisor may abdicate his or her own responsibility and pass the buck to the Inspection Service.

Listed are questions frequently asked by employees in reference to his/her rights during an interrogation by agents of the Office of Inspector General and/or Postal Inspectors.

FREQUENTLY ASKED QUESTIONS AND ANSWERS

1. **When should I request a union representative or shop steward?**

   You should request a union representative or shop steward as soon as an individual identifies himself or herself as a postal inspector or as an agent from the Office of Inspector General (OIG) and advise you they would like to ask you questions. This also applies when a window clerk stamp stock is counted by a postal inspector and the clerk suspects that he or she could become the subject of an investigation.

2. **Are postal inspectors or as an agent from the Office of Inspector General required to advise employees that they are entitled to have a union steward or representative present during an interrogation?**

   No, they are not required to inform the employee of his or her right to have a union steward or representative present during an interrogation. The responsibility rests with the employee to know specifically what their rights are.

3. **What is the employee rights during an interrogation by the Postal Inspection Service or an agent from the Office of Inspector General, when he or she may be the subject of a criminal investigation?**

   If a union steward or representative believes the employee may be the subject of a criminal investigation, they should advise the employee to remain silent and to consult with an attorney. Furthermore, they should advise the postal inspectors or agent from the Office of Inspector General that the employee intends to seek legal counsel and will cooperate with the investigation pending advice from their attorney.

   The union steward or representative should remember that if enough evidence has already been gathered to establish criminal culpability, the postal inspectors or agent from the Office of Inspector General will advise the employee of their Miranda Rights under the law.

4. **What is a PS Form 1067 and if requested, should the employee sign this form?**

   The PS Form 1067 is the United States Postal Inspection Service Warning and Waiver of Rights. It is commonly referred to as the Miranda Warning.

The employee is asked to sign a waiver of their rights prior to being questioned by the postal inspectors or an agent from the Office of Inspector General . **Under no circumstances should an employee sign this form until they have engaged legal counsel.**

5. **Are craft employees who are temporarily assigned to management positions covered by the provisions of the Collective Bargaining Agreement with respect to union representation during an interrogation by the Postal Inspection Service or an agent from the Office of Inspector General ?**

   Yes, an employee on a temporary assignment, to a management position, has all the rights applicable to his/her regular bid position under the Collective Bargaining Agreement.

6. **What is an Investigative Memorandum?**

   After the completion of an investigation by the Postal Inspection Service, criminal or otherwise, an investigative memorandum is furnished to local management. It serves as an official record of the inspectors' findings and supplies evidence which may be used against an employee and in support of charges that may be issued by the postmaster or other management officials.

7. **Are there any situations in which an employee should agree to a polygraph test?**

   In accordance with the Collective Bargaining Agreement, Article 17, Section 3, all polygraph tests will continue to be on a voluntary basis. **Employees should never voluntarily submit to a polygraph examination until he or she obtains the advice of legal counsel**.

8. **What is the role of a union steward or representative during an investigative interview?**

   The union steward or representative should not play the role of a passive observer during an investigative interview. The inspection service or an agent from the Office of Inspector General normally uses intimidating tactics, to reduce the effectiveness of the union steward or representative. Consult with the employee prior to the interview and advise him or her not to become intimidated.

9. **Are all postal service employees required to cooperate in postal investigations?**

   Yes, all employees are required to cooperate during an investigation by the Postal Inspection Service or the Office of Inspector General. However, if an employee has been arrested for a violation of criminal law, or is a suspect in the investigation, the employee must be informed his/her constitutional rights against self-incrimination.

   He/she is entitled to remain silent and refuse to answer questions without his/her attorney present. This warning is based upon the United States Supreme Court decision of Miranda v. Arizona, 384 U.S. 436, which requires all law enforcement officers to advise persons under investigation of their constitutional rights.

10. **Can an employee request the presence of both a union steward and an attorney during an interrogation by the Postal Inspection Service** employee**?**

    Yes, the employee can request the presence of both a union steward and an attorney during an interrogation by the Postal Inspection Service or the Office of Inspector General.

11. **Are postal inspectors or the Office of Inspector General authorized to issue letters of charges or recommend disciplinary action against an employee?**

    No, postal inspectors or the Office of Inspector General are not authorized to issue letters of charges, recommend disciplinary actions, or give opinions to management officials with respect to the type of disciplinary action to take. Their role is to simply report the facts obtained during the investigation.

12. **Is an employee required to make a written statement when requested by the Postal Inspection Service or the Office of Inspector General?**

    No, neither the law nor the Collective Bargaining Agreement mandates the employee to give a written statement to the Postal Inspection Service or the Office of Inspector General when requested.

    Any statement, either written or recorded, is voluntary. **The employee should be advised to consult with an attorney prior to giving a written or oral statement**

In closing, a special thanks to Greg Bell, Director of APWU's Industrial Relations Department and his staff for their outstanding efforts in gathering information to disseminate to the officers and shop stewards, that clarifies the distinction between the Office of the Inspector General and the Postal Inspection Service. His persistence paid off and is evidenced by the fact that both agencies were compelled to live up to their obligations under the Collective Bargaining Agreement and the Law.

Remember that all disciplinary action must meet the **test for just cause** as defined in Article 16, Section 1. The steward should always investigate the grievance, collect the facts involved in the case, and ask the six success questions:

- Who?
- What?
- When?
- Where?
- Why?
- How?

The steward should always follow these rules:

Rule 1: Be well prepared.

Rule 2: Keep a cool head.

Rule 3: Confer with the grievant.

Rule 4: Request assistance if needed.

Rule 5: Refuse to be intimidated by the Postal Inspector Service.

The burden of proof falls upon management to support all charges. If the steward follows the guidelines outlined in this book, the Union will have met its obligations.