

INTERVIEWS AS EVIDENCE

THE STRATEGIC INVESTIGATIVE PROCESS

A STRATEGY BOOK

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FOREWORD

This Strategy Book, my fourteenth as a National Representative and Advocate for the APWU, focuses on the most powerful and underutilized weapon in our grievance investigative arsenal – the Investigative Interview.

Usually when we think Interview, we consider it in the context of a Postal Inspection Service Interview/Interrogation or possibly a management Pre-disciplinary Interview prior to discipline. The Investigative Interview, which is this Handbook's subject, is the critical research and investigation tool necessary for success in grievance processing. This Book places for the first time - into one accessible package - the Collective Bargaining Agreement references, strategies and method – the road map if you will – for utilization of the Investigative Interview for success in pursuing Collective Bargaining Agreement violations, in defending workroom floor rights and in defending against discipline.

Articles 15, 17 and 31 of the Collective Bargaining Agreement all affirm our right to conduct Interviews during the earliest stages of the Grievance/Arbitration process. Yet the overwhelming majority of cases we pursue are adrift in a sea of uncertainty. Key facts are not proven; questions are not answered; issues are not raised or addressed and proof is not presented.

The strategies within this book will, I believe, help us to overcome the long existing roadblocks which have prevented and dissuaded the use of the Interview to win cases. The Strategies will also utilize our own CBA to incorporate the Interview as a factual and tangible element of evidence vs. the presupposition that the Interview is merely a rarely provable “he said – she said” haphazard exercise.

This Strategy Book utilizes excerpts from the Pennsylvania State Postal Workers Union Shop Stewards Training Guide – the finest educational trade Union work of its kind. Also included are illustrations from the Defense vs. Discipline Strategy Book – utilized by Trade Union Stewards, Officers and Advocates throughout the United States.

I do believe that if you use – really use – the Strategies contained in Interviews as Evidence, you will vastly improve the quality of your grievances and genuinely enhance your chances to win.

If you have questions or need further information on the contents of this Book or are interested in my other 13 Strategy Books, please contact me at (856) 740-0115 or write to me at 1401 Liberty Place, Sicklerville, New Jersey.

Yours in Unionism,

Jeff Kehlert

Jeff Kehlert
National Business Agent
Clerk Craft

ACKNOWLEDGEMENTS

My thanks to Pennsylvania Postal Workers Union former Executive Vice President Mike Boyne for his coordination of the 2001 Pennsylvania State APWU Educational Spring Assembly in Grantville, PA. That is where the concept for a new class on Investigative Interviews was first realized, and where the idea for this Book first took shape. I thank him for providing me the opportunity to instruct that inaugural presentation and for his concept contribution to this work.

I would be remiss if I did not also acknowledge those Union Leaders without whom this and my other thirteen Strategy Books would not have been possible. Over the years each has represented what is best about Our American Labor Movement. I thank them for their commitment to the cause and for their unwavering support:

William J. Lewis, President
Trenton Metro Area Local

Mark Belland, Esquire
Attorney for Labor Unions

John Clark, National Business Agent
Chicago Region, Clerk Division

John T. Quinn, Past President
Pennsylvania Postal Workers Union

Gerard "Jerry" Monzillo, Past President
New Jersey Postal Workers Union

Michael G. Zullo, Past Director
Research & Education Department - APWU

DEDICATION

For my parents, Jane and Herb Kehlert,

For my Mother-in-Law, Lucy Chirichello,

For my wife, Congetta,

All, for always being there.

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CHAPTER 1

INTERVIEWS AND OUR COLLECTIVE BARGAINING

AGREEMENT

The Investigative Interview is a crucial and highly valuable investigative tool for compiling evidence in support of Union defenses vs. disciplinary actions and in prosecution of USPS Collective Bargaining Agreement violations.

In much the same way an attorney uses the deposition process when preparing a case in law, witnesses are questioned with both the questions and answers being recorded and made part of the official investigatory record of the case.

Black's Law Dictionary, Fifth Edition, defines the Deposition - for our purpose - in this way:

Deposition. A discovery device by which one party asks oral questions of the other party or of a witness for the other party.

Like the deposition used in both Civil and Criminal legal proceedings, the Investigative Interview for Union Representatives is a crucial tool which serves in several key roles:

1. ESTABLISHES facts not able to be proven through review of documentation;
2. LIMITS later deviation from established testimonial and documentary evidence;
3. PREVENTS surprises and "new" argument and evidence at Arbitration;
4. ENHANCES our chances of lowest possible grievance step resolution through full development of our evidence, our arguments and of our grievance.

The Collective Bargaining Agreement between the USPS and the APWU specifically provides for stewards and representatives to conduct interviews with witnesses and individuals related to our investigation.

Article 17 Section 3 states:

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.

Article 31 Section 3 also strengthens our rights to access all relevant information – including that attainable through interviews.

Section 3. Information

The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement.

These Interview Rights have evolved over the past thirty plus years, as the Parties to the CBAs - during that time - have interpreted specific parameters and identified categories of interviewees. The Parties' interpretations are reflected in what are known as Step 4 Interpretive Decisions. These are commonly referred to as "Step 4s." They occur when the Parties are unable to agree upon the meaning of Collective Bargaining Agreement language. The USPS may say section A of the Collective Bargaining Agreement means X. The APWU says section A means Y. These Step 4 decisions encompass resolutions, remands and denials. They establish interpretations of the Collective Bargaining Agreement which become part of the Collective Bargaining Agreement.

The Step 4 language of **Article 15 Section 4D** states:

It is agreed that in the event of a dispute between the Union and the Employer as to the interpretation of this Agreement, such dispute may be initiated at the Step 4 level by either party. Such a dispute shall be initiated in writing and must specify in detail the facts giving rise to the dispute, the precise interpretive issues to be decided and the contention of either party.

The Step 4 interpretive decisions which relate to Investigative Interviews are as follows:

H8C-5K-C 14259

Class Action San Diego, CA

April 23, 1981

"The parties mutually agree that the disclosure provisions set forth in Article XV, XVII and XXXI, National Agreement intend that any and all information upon which the parties rely to support their position in a grievance is to be exchanged between the representatives to assure that every effort is made to resolve the grievance at the lowest possible level."

NC-S-8463/N5FL 13148

Branch 1477 St. Petersburg, FL

November 18, 1977

Article XVII, Section 3 of the National Agreement states that interviews with aggrieved employees, supervisors and witnesses shall not be unreasonably denied. It is anticipated that supervisors will respond to reasonable and germane questions during the investigation of a grievance.

A8-C-2982

Class Action Canton, OH

December 10, 1982

“It is the understanding of the parties that requests to interview witnesses must be reasonable as to the number required and specific as to who is required. Also their involvement or input must be relative to the dispute.”

NC-W-12728/W-463-78N

Branch 1742, Turlock, CA

November 9, 1978

“As was stated in the Step 3 letter, in the future under like circumstances, the Postmaster will assume responsibility of the prior actions of supervisors who later transfer out to another facility. Further, if it is necessary for the Union to interview a supervisor or any other employee who is directly involved in a grievance, management recognizes its obligations to make every reasonable effort to make these employees available to the Union.”

NC-W-9980/W-1465-77N

T. Young, Jr., Whittier, CA

February 16, 1978

“Based on the evidence presented in this grievance, we find that in the specific circumstances considered, the request to interview the customer was properly denied. However, in cases where a customer’s complaint is directly used to affect the wages, hours and working conditions of an employee, the steward shall be allowed to conduct such an interview if the customer agrees.”

H8N-3W-C 21294

Class Action, Jacksonville, Florida

January 12, 1989

“In accordance with Article 17 of the National Agreement, a steward’s request to leave his/her work area to investigate a grievance shall not be unreasonably denied. Subsequent to determining that a non-postal witness possesses relevant information and/or knowledge directly related to the instant dispute under investigation, a steward may be allowed a reasonable amount of time on-the-clock to interview such witness, even if the interview is conducted away from the postal facility. However, each request to interview witnesses off postal premises must be reasonable and viewed on a case-by-case basis. For example, it is not unreasonable for a supervisor and/or steward to telephone the prospective witness to ascertain availability and willingness to be interviewed and, if willing, to establish a convenient time and locale.”

H7N-3W-D 3069

J. McVay, St. Petersburg, Florida

September 23, 1988

“After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. The Postal Service agrees that a union 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.”

H1T-5H-C 28879

V. Randle, Sacramento, CA

May 9, 1985

“The parties at this level agree that a steward may interview employees of different crafts if such request is being made pursuant to Article 17, Section 3, of the National Agreement. However, if the steward is investigating a grievance not relevant to the steward’s craft, the provisions of Article 17, Sections 2.B. and 2.E., must be followed.”

HSC-3D-C 25721

APWU – Local, Atlanta, GA

April 28, 1982

“We did agree that if a steward deems it appropriate to interview a grievant outside the immediate work area, the steward shall not be unreasonably denied.”

H1C-4A-C 19626

APWU – Local, North Suburban, IL

October 24, 1983

“During our discussion, we agreed that no national interpretive issue involving the terms and conditions of the National Agreement is fairly presented in this case. Article 17.3 lists the categories of employees—aggrieved, supervisors and witnesses—that stewards have the right to interview. The article also provides that request shall not be unreasonably denied.

We agreed that determinations as to who, in a given case, can be categorized as an aggrieved employee, supervisor or witness must be made based on fact circumstances. Also whether a request has been unreasonably denied can only be determined by reviewing the facts involved in a given case.”

As you can see - whether it be Postal Inspectors or citizens who are not employees of the Postal Service – we have the right under our Collective Bargaining Agreement to interview them in the course of our grievance investigation.

CHAPTER 2

AN OVERVIEW OF THE INTERVIEW

The Pennsylvania Postal Workers Union Shop Steward Training Guide provides an excellent overview of the Interview and its use. My thanks to the Pennsylvania Postal Workers Union for permission to excerpt that Section here.

Interviews

Interviews are one of the most important weapons in the steward's arsenal of rights which can decide whether or not the Union will win grievances. Too many times in arbitration the Union finds new testimony and new explanations from management that justify or strengthen its position. Often, the Union advocate goes into arbitration not knowing what management's witnesses are going to say. This results in losing cases we should win.

Interviews are a powerful tool which, when properly constructed and well conducted, will establish facts which are otherwise unavailable in documented form. They can also substantiate and support the Union's position.

We have the right to interview any and all employees, supervisors and witnesses who are relevant to our grievance. If we do our job and conduct thorough interviews, we greatly enhance our chances of success in the grievance procedure.

? What is an interview

An interview by a Union steward consists of a list of questions written **prior** to meeting a witness, employee or management official. The interview should be designed to elicit all information the witness has concerning the case the steward is investigating. At the meeting, the questions are asked and the **exact** responses are written down under the question. The steward notes the time and date the interview took place. The questions are designed to answer who, what, where, when, how and especially why. In some cases, it is advantageous to take down a statement prior to asking questions where there is a dispute concerning what took place. A statement may also provide a framework from which the interview can be constructed. Do not let a witness write out his/her own statement unless he/she is friendly and articulate. In no case should a statement be considered an adequate substitute for a properly constructed and conducted interview.

? How can an interview be used

Once an interview has been completed, the Union has two (2) important tools of evidence in arbitration.

1. The interview, if written properly, can be submitted as evidence at the arbitration hearing.
2. The Union steward becomes a strong witness to keep the facts the same to ensure that management or adverse witnesses do not change their story.

Many times, we win cases on credibility issues alone. When interviews are done at Step 1, the Union advocates handling the grievance at later steps have the information to make a sound judgment on how to pursue or resolve the grievance.

? Are interviews done on the clock

Article 17, Sections 3 & 4, of the National Agreement gives the steward the right to conduct interviews on the clock. Interviews are part of grievance handling. If a postal patron needs to be interviewed, time spent in the actual interview is on the clock even if the interview must be conducted *off Postal premises*.

? Should interviews be done on both discipline and contract grievances

Yes, regardless of the type of grievance, interviews are extremely useful. In disciplinary grievances, interviews help to establish what actually took place, resolve fact circumstance disputes and establish whether or not due process was followed. In contract cases, interviews establish fact circumstances and management's reasoning and justification for the action taken.

The importance of interviews cannot be overstated. Although interviews will not guarantee success, they greatly enhance our chances to succeed. An interview can identify the issue(s) of the grievance, provide evidence, ensure that testimony cannot be changed and define the weaknesses or strengths of the Union's case.

To be effective, an interview must be conducted and documented as follows:

Steward Glaser: "Did you issue the notice of suspension to Joe Smart?"

Supervisor Jackson: "I don't have to answer that."

Steward Glaser: "From whom did you seek higher level concurrence?"

Supervisor Jackson: "I did not seek higher level concurrence."

Steward Glaser: "Did you investigate before issuing the suspension?"

Supervisor Jackson: "Yes, I read the Investigative Memorandum."

See the following page for an illustration of a properly documented interview.

Notice how the written response is the **exact** response given by the witness during the interview. Do not precede the response with "He said/She said." The steward should attempt to obtain a signature on this interview by the witness whenever possible.

AMERICAN POSTAL WORKERS UNION, AFL-CIO

INTERVIEW OF WITNESS IN THE COURSE OF
GRIEVANCE INVESTIGATION/PROCESSING

Date: 1/10/95 RE: SEVEN (7) DAY SUSPENSION ISSUED TO J. BROWN

Name of Interviewer: L. GLASER, SHOP STEWARD TOUR II

Name of Individual Interviewed and Title: BILL JACKSON, SUPERVISOR – TOUR II

QUESTION: DID YOU ISSUE THE NOTICE OF SUSPENSION TO JOHN BROWN?

ANSWER: I don't have to answer that.

QUESTION: FROM WHOM DID YOU SEEK HIGHER LEVEL CONCURRENCE?

ANSWER: I did not seek higher level concurrence.

QUESTION: DID YOU INVESTIGATE BEFORE ISSUING THE SUSPENSION?

ANSWER: Yes. I read the investigative memorandum.

Bill Jackson 1/10/95 LuAnn J. Glaser 1/10/95
Witness signature Date Union Representative Date

Page _____ of _____

This form was originally developed for a training seminar in Toms River, New Jersey. It well serves our purpose. The form includes space for Questions and Answers and additional space

for questions and answers which will arise during the interview. Added sheets for additional questions and answers can also be used.

It is important to number your questions for identification purposes. In this way, they can be easily referenced and included in your grievance.

This also adds credibility to your interview because it prevents “word processing” deletion/addition creative license from taking place.

Should the steward amend – in any way – the exact responses then the Interview will be subject to refutation on a credibility basis. Should the USPS successfully establish that only a single response was amended, then the entire Interview may be excluded by an Arbitrator or be of little or no value in supporting our grievance.

Below are examples of “amended” responses in an Interview:

- 11. Question: Did you order Mr. Doe to leave the workflow?
Answer: Write, No Answer.

- 14. Question: Did you contact the Local Union Steward?
Answer: Write, No Answer.

- 15. Question: Did you contact the Local Police?
Answer: Write, No Answer.

The Steward’s written interview form is as follows:

- 11. Did you order Mr. Doe to leave the workflow?
Did not answer.

- 14. Did you contact the Local Union Steward?
No answer.

- 15. Did you contact the local police?
Refused to answer.

In each of these illustrations the Steward did not record the exact, stated response. The interviewee did not say,

“Did not answer.”

“No answer.”

“Refused to answer.”

The interviewee stated – each time – “Write, No answer.”

Once a Steward fails to record the exact response or amends what is said, the entire interview’s accuracy and credibility is called into question.

When an Interview is conducted, the steward **must** – without exception – record the **exact responses** of the interviewee. Write the **exact** responses - no “he said,” “she said,” – to your prewritten questions and to your questions extemporaneously produced during the Interview.

INTERVIEWS VS. QUESTIONNAIRES

Management may insist upon your submission of your questions to them in advance of the meeting. Do not provide them with your questions! You have the right under Articles 17 & 31 to interview. Interviews are not questionnaires, surveys or polls. They are not taken home or to lunch for advance review and leisurely response. They are not written by witnesses/interviewees.

The American Heritage Dictionary of the English Language, 10th Edition, defines interview as:

A face-to-face meeting . . . arranged for the formal discussion of some matter.

You conduct interviews face-to-face if possible. A phone interview is not desirable but may be necessary dependent upon certain factors such as great distances, time, cost, etc.

If management refuses to be interviewed, insisting upon a “take home” questionnaire, this is a denial of (Interview) information under Articles 17 & 31 of the Collective Bargaining Agreement. (see page 17)

CHAPTER 3

THE INITIAL PROCESS

I. DETERMINE WHO AND WHY

It may appear to be self evident but first we must determine who we want to Interview – and why we want them. Some Stewards (and hereafter all representatives who conduct Interviews shall be referred to as Stewards) throw an Interview into a grievance and say, “Look, I have conducted an interview!!” Yet there was not established even a rudimentary basis for why this person was interviewed. To conduct an interview – without direction and purpose – is of no value to your grievance and to the violation/defense you are pursuing.

A. THE OUTLINE

So, first, create a mini outline – really a list – of who you want to interview, and why you want them. This is not an extensive outline of what you hope to specifically get from the person, or the detailed question strategy you will employ. That will come later. This outline/list is your written starting point to begin the process so that you will know - at the very beginning – who you are going to interview and for what purpose.

Making an actual list of persons – with what you believe the role each will play in this grievance “drama” - will assist you and encourage the later formulation of the actual interview strategy and questions.

A “Subject List” chart is suggested below:

<i>NAME AND TITLE</i>	<i>PURPOSE OF INTERVIEW</i>

II. THE REQUEST FOR INFORMATION

Essential to any Interview's initiation is the Request for Information under Articles 17.3 and 31.3. Each Request for Information must be in writing utilizing the standard Union Request for Information form (see illustration on page 15) or a locally devised hybrid form or through written correspondence.

We must ensure that our access to Interview Subjects is documented under Articles 17 and 31 or we may later face management challenges to our Interviews on the basis that we obtained Interview Subjects – and Interviews – outside the Collective Bargaining Agreement.

Without Requests for Information as the initiating documentation toward gaining access, the USPS may argue the Interviews we include were obtained/facilitated outside the Collective Bargaining Agreement and that they should be excluded from the grievance procedure.

With our Requests for Information as documentation, we bring the Interview into the Collective Bargaining Agreement's umbrella and take the first step toward their proper inclusion into our grievance.

You must complete and submit a Request for Information listing specifically the name and title of the person(s) you want to interview. This again may seem self-evident, but many, many grievances are processed without Requests for Information. And your Request for Information must list the individuals with enough specificity so as to leave no doubt as to their identity. If you are in a large Mail Processing Plant, list the person by first and last name and title – John Doe, Clerk. The Request for Information is of particular value in the event you are denied access to persons to be interviewed. The USPS creates one of our most successful procedural and due process arguments when it denies information/witnesses we request. If your RFI is incomplete or unclear as to what/who you are requesting as well as the purpose of your request, you may enable the USPS to successfully defend its denial. Don't let this happen. Be specific. Be clear.

Here is a Request for Information for persons to be interviewed:

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Grievant/Union	Nature of Allegation
Class Action APWU	Overtime violation, Article 8

1/1/95

Date of Request

To: John Doe

Title: Supervisor

From: LeRoy Moyer

Title: Shop Steward, Tour II

Subject: REQUEST FOR INFORMATION & DOCUMENTS RELATIVE TO PROCESSING A GRIEVANCE

We request that the following documents and/or witnesses be made available to us in order to properly identify whether or not a grievance does exist and, if so, their relevancy to the grievance:

1. Tom White Mail Processing Clerk
2. Jane Doe Mail Processing Clerk
3. Rick Jones Supervisor, Distribution Operations
4. Mike Black Manager, Distribution Operations
5. _____

Note: Article 17, Section 3 requires the Employer to provide for review all documents, files, and other records necessary in processing a grievance. Article 31, Section 3 requires that the Employer make available for inspection by the Unions all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement. Under 8a(5) of the National Labor Relations Act it is an Unfair Labor Practice for the Employer to fail to supply relevant information for the purpose of collective bargaining. Grievance processing is an extension of the collective bargaining process.

() REQUEST APPROVED

() REQUEST DENIED

(date)

(signed)

Always include this Request for Information with your Step 2 Appeal.

WHEN INFORMATION IS DENIED

Whenever management denies information in the form of 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, the Union has the right to access all relevant information. Often, management denies the Union access to witnesses. This denial by management constitutes a very serious due process breach which prevents the best possible defense in a disciplinary case or best possible pursuit of a contractual violation - through full development of all arguments.

Under the Collective Bargaining Agreement, the Union has contractual rights to all relevant evidence including witnesses and management creates one of our most successful Due Process defenses when it denies us access to information. 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 its Just Cause burden of proof in a disciplinary instance.

Example: Management denies the Union access to the attendance records of a disciplining supervisor and several craft employees in the course of the Union's investigation into an attendance-related removal.

The negative inference drawn is that examination of those attendance records for the supervisor and the craft employees would reveal disparate or unfair treatment of the grievant. The act of withholding information by management, casts shadow and doubt on the reasons for the withholding--that management does not want to let the facts be known as those facts will damage management's case. The Union must also argue that the withheld information would have proven - if it had been produced - precisely what the Union contended the information would have revealed.

2. Lowest Possible Step Resolution Fatally Damaged

Resolution of grievances at the lowest possible step is the cornerstone of Article 15's Grievance/Arbitration procedure. When management denies the Union access to relevant information, then full development of all the facts, arguments and Collective Bargaining Agreement reliance cannot be achieved. Without such full development, and without everything being placed before the parties for discussion at the lowest possible step, there can, in actuality, be no real probability of lowest possible step resolution of a grievance.

Thus, Article 15.4's basic principle is violated and with it the due process rights of the grievant, the grievance and of the Union to benefit from the possibility of lowest possible step resolution.

3. Contentions/Arguments Denied Development

Articles 15, 17, and 31 all provide the Union with the ability to fully develop all the facts through evidence gathering to ensure every available argument is set forth in a grievance. When management denies the Union access to relevant information, it prevents the Union from formulating and ultimately presenting the best possible case. Such denial violates the basic due process right of the Union to pursue contractual violations and defend against discipline.

Management will often attempt to provide the Union information after a particular step in the Grievance/Arbitration procedure. Our position, whether we accept access to the tardy data or not, must be that the due process violation cannot be corrected as the lowest possible step for resolution is gone forever through the passage of time and the Collective Bargaining Agreement's time limits. Nor should we accept remands to a prior step for further discussion in conjunction with the information to which access was originally denied. Such a remand would negate our due process argument for denial of information.

In arbitration, we must argue that denial of evidence at any stage of the Grievance/Arbitration procedure precludes the presentation of that evidence at the arbitration hearing. Due to management violations of Articles 15, 17, and 31, and management's denial of due process to the Union, grievance, and grievant, it would be wholly inappropriate and unfair for an arbitrator to even be exposed to denied information.

WHAT TO DO

When a request for access to information is denied, we must ensure that the "hook is set" through very deliberate action. That action includes the following:

1. File an additional grievance citing Articles 15, 17, and 31 on the information denial.

In that grievance, request as a remedy:

- (1) The information be provided so long as such access is given no later than at the Step 2 grievance meeting for the original grievance and,
- (2) Should the information not be provided no later than at the Step 2 grievance meeting, then the original grievance be sustained in its entirety.

Obviously, if a volume of requested information is provided to the Union at the Step 2 meeting time to review that information must also be provided. A Steward cannot be expected to review in detail - and formulate contentions - at the meeting with no prior review opportunity. In instances such as this a continuance/extension of the meeting is reasonable and appropriate. Management denial of such an extension/continuance would constitute an additional Due Process breach.

Although it can be argued an additional/repetitive grievance is neither necessary nor reasonable under our Collective Bargaining Agreement, many arbitrators will ask the

question and let management off the hook if the Union did not file the repetitive grievance.

2. Correspond With Follow up Requests For Information

Follow the initial Request for Information with a personalized letter taking the Request for Information form to a more specialized level. In this manner, an arbitrator will notice the Union made a persistent, "second effort" to obtain the information. It is a good idea to submit at least two (2) follow-up correspondence in addition to the original Request for Information prior to the Step 2 meeting. At least one of the two should be to the immediate superior of the addressee on the original Request for Information. You may wish to file a second request to the superior and even file a request with the superior's boss. In this way, we can point out to the Arbitrator we were making every effort - including affording a higher level manager(s) the opportunity to rectify the lower level supervisor's failure.

3. Include Denial of Information Reference in the Original Grievance's Step 2 Appeal

Following the full disclosure commitment of the parties in Article 15 and our responsibility to present fully developed grievances at Step 2 (as far as possible), we must ensure that each bit of information we are denied access to during our attempted investigation is referenced as part of our contentions in our Step 2 appeal. We must cite the violations of Articles 15, 17, and 31 and argue the three major due process arguments: negative inference, fatal damage to lowest possible step resolution and development of defenses denied.

Specifically citing the Articles' 15, 17, and 31 argument in our Step 2 appeal will prevent management from successfully arguing that the denial of information issue is a new argument and not proper for consideration by the Arbitrator. Remember, request all data you believe to be relevant. We then determine what we will use.

While most arguments on information denials will seem self-evident based upon review of management comments on the requests for information, coupled with a "denial" signature or initials, the interview is crucial when there is no such notation. Further, the interview can strengthen our case when management supports its denials through responses. Some examples are:

- You did deny the information?
- You have the information requested on the Request for Information in your possession?
- You relied on that Information in issuing the removal?
- You interviewed Postal Inspector Arnold prior to issuing the Notice of Removal?

- You did not provide access to Postal Inspector Arnold to the Union?
- Doesn't Article 17.3 give the Union access to the witnesses?
- 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 in 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.

Management, when it denies any evidence, violates the Collective Bargaining Agreement and creates very strong due process breaches. Many times, the arguments management creates by denying us information are far more beneficial to our grievance's chances than the information would have been had it been obtained.

CHAPTER 4

THE INTERVIEW IN YOUR GRIEVANCE

Now that we know the Interview is part of our Collective Bargaining Agreement's Union Investigative Rights, the incorporation of the interview into the applicable grievance is our next step. Strategies in formulating and conducting interviews will be addressed later. However, no matter how skillfully an Interview is put together, that construction is of no value if the Interview is not melded into the grievance – as evidence. Proper inclusion and incorporation is crucial, as the USPS will resist against the interview as evidence during the grievance procedure - and especially at Arbitration - and may be successful in raising procedural objections which bar the interview should the interview not be so included.

THE INCORPORATION – STEP BY STEP

The following is the recommended STEP by STEP process for inclusion and incorporation of your INTERVIEW INTO THE GRIEVANCE:

1. Include Your Request For Information – Both The Original And A Clear, Word-Processed Copy (If Possible) With Your Step 2 Appeal.
- 2.. Include Your Interview Copies – Both The Original And Clear, Word-Processed Copies (If Possible) With Your Step 2 Appeal.
3. Specifically Identify And List The Request For Information With The Name(s) Of Those Interviewed On The Union's Step 2 Appeal Form In The "List Of Attached Papers As Identified" At The Bottom Of Item 12 "Detailed Statement Of Facts/Contentions Of The Grievant" Section.
4. Specifically Identify And List The Interview On The Union's Step 2 Appeal Form In The "List Of Attached Papers As Identified" At The Bottom Of Item 12 "Detailed Statement Of Facts/Contentions Of The Grievant" Section.

In this way, the USPS cannot object – successfully – to the Interview as “new evidence” not cited within the Step 2 Appeal Form.

5. Notate Within That "List Of Attached Papers" Both The Extemporaneously Completed Interview And The Typed/Cleaned/Word-Processed/Reprinted Copy.

For example:

12 DETAILED STATEMENT OF FACTS/CONTENTIONS OF THE GRIEVANT
List of attached papers as identified:
Paper Item 1. Request for Information dated 8/7/2004
Paper Item 2. Interview conducted 8/10/2004 with Joe Johns – SDO
Paper Item 3. Transcribed (clean) copy of John’s Interview
13 CORRECTIVE ACTION REQUESTED

This may seem like overkill but should only the copy completed during the interview be included legibility/clarity issues may arise. The cleaned/typed copy will overcome these issues.

More importantly, should only the cleaned/typed copy be included the USPS may argue that this does not represent the “actual” Interview conducted and authored by the Steward. Authenticity dictates the inclusion of the original, extemporaneously produced Interview.

5. Specifically Include And Reference The Interview Within The Body Of The “Detailed Statement Of Facts/Contentions Of The Grievant” (Item 12) Of The Union’s Step 2 Appeal Form.

When writing the Contentions of the Union – the WHO, WHAT, WHERE, WHEN, WHY and HOW of the grievance – the interview must be cited for its role as evidence in support of Union defenses or prosecution/CBA violation pursuit. Inclusions such as:

“The Interview of John Doe established /proved /supported/refuted/rebutted, etc.” are necessary.

Should we fail to include the Interview as referenced evidence within the Step 2 appeal's body of contentions the USPS will argue that the Interview – while included as “attached papers” still represents “new evidence/argument” and is barred based upon Article 15.2 Step 2d's commitment to ‘mutual, full exchange and development’ of the Parties’ positions, evidence, arguments, etc.

6. Compartmentalize Each Question To Be Utilized Within The Particular And Specific Argument/Contention Of The Grievance.

This is the further - and critical - incorporation of specific interview questions and answers into the grievance. It also “locks in” your interview and interweaves the important and applicable questions and answers into the specific contentions of the grievance.

There are two recommended methods for inclusion; 1: the Narrative Method and 2: the Numbered Method.

An illustration of the “Narrative Method” is as follows:

The Union is arguing that a Past Practice has existed at the Edison, New Jersey Post Office for at least 15 years. This Past Practice is two (2) fifteen (15) minute rest breaks for each employee per shift. We conduct an interview with the former Postmaster Beem (who happens to be disgruntled with the treatment he received in his last years). The Questions and Answers go like this:

- | | | |
|----|---|--------------|
| 7. | Was there a practice of two fifteen-minute rest Breaks in Edison while you were Postmaster? | Yes, Always. |
| 8. | Was this practice ever changed while you were Postmaster? | No. |
| 9. | How long were you Postmaster? | 23 Years. |

The above Questions and Answers are then specifically included within the body of the Step Appeal's Detailed Statement of Facts/Contentions in support of our position that there has been a long standing Past Practice in Edison of two (2) fifteen-minute rest breaks for 23 years.

The Narrative Method inclusion would go something like this:

The Union contends the Past Practice of two (2) fifteen (15) minute rest breaks at the Edison Post Office is long standing – at least 15 years – without deviation or exception and mutually accepted by the USPS and APWU.

As evidence of this, the Union interviewed former Postmaster Beem on August 1, 2004 in the Postmaster's Office as follows:

- | | | |
|----|---|--------------|
| 7. | Was there a practice of two fifteen-minute rest Breaks in Edison while you were Postmaster? | Yes, Always. |
| 8. | Was this practice ever changed while you were Postmaster? | No. |
| 9. | How long were you Postmaster? | 23 Years. |

An illustration of the “Numbered Method” is:

THE UNION CONTENDS THERE WAS NOT JUST CAUSE FOR THE REMOVAL AS FOLLOWS:

1. NO PREDISCIPLINARY INTERVIEW

The following Questions and Answers are from the Union’s Investigative Interview of Supervisor Smith by Shop Steward Kehlert on 2/1/04 at the Main Post Office, SDO’s desk. They prove there was not a proper Predisciplinary Interview prior to discharges’ initiation and issuance:

Question 4: Did you tell Mr. Doe you were contemplating/considering discipline?

Answer: No.

Question 6: Did you present grievant Doe with the documents which you consider as evidence vs. Mr.Doe?

Answer: No.

Question 7: Did you present Mr. Doe with any written documentation for his review or response?

Answer: No.

What we have done is include – specifically in the grievance appeals- those Questions and Answers which we are relying upon as evidence to help prove our Past Practice contention as well as our No Proper Pre-Disciplinary Interview contention.

When you write Step 2 grievance appeals in the recommended manners prescribed above, you will meet the requirements of Article 15.2 Step 1d which requires our grievance appeals to include our detailed contentions and facts.

Article 15.2 Step 1 (d) states:

“The Union shall be entitled to appeal an adverse decision to Step 2 of the grievance procedure within ten (10) days after receipt of the supervisor’s decision. Such appeal shall be made by completing a standard grievance form developed by agreement of the parties, which shall include appropriate space for at least the following:

1. Detailed statement of facts;
2. Contentions of the grievant;
3. Particular contractual provisions involved; and
4. Remedy sought.”

In addition, you will meet the full disclosure requirement of Step 2 in anticipation of our Step 2 Hearing -

Article 15.2 Step 2 (d) states:

“At the meeting the Union representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties’ representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Article 31. The parties’ representatives may mutually agree to jointly interview witnesses where desirable to assure full development of all facts and contentions. In addition, in cases involving discharge either party shall have the right to present no more than two witnesses. Such right shall not preclude the parties from jointly agreeing to interview additional witnesses as provided above.”

- and you will do it not later than at Step 2 of the process as is required by our Collective Bargaining Agreement and by so many Arbitrators.

Unless management presents rebuttal evidence at the Step 2 hearing against our interview, i.e. interviews, statements, live witnesses, they should be unable to successfully refute/rebut the interview evidence within our grievance. They will be unable to successfully mount a defense of “He/She never told the Steward that” or “the steward was mistaken.”

If the USPS evidence is not presented at the Step 2 hearing, it is barred by our Collective Bargaining Agreement from later introduction and reliance.

When you specifically include Interview Questions and Answers in your Step 2 appeals, you will tap into an almost unlimited resource of evidence which has been minimally utilized since the birth of Postal Collective Bargaining in 1971.

RESPOND WITH SPECIFIC CORRECTIONS OR ADDITIONS TO THE USPS STEP 2 DECISION

This is very, very important. The following scenarios regularly and consistently occur:

1. The USPS presents no evidence at the Step 2 Hearing.
2. The USPS makes arguments at the Step 2 Hearing while submitting no supporting evidence.
3. The USPS makes “new” arguments within its Step 2 decision – unsupported by any evidence.
4. The USPS Step 2 stated “new” arguments were never stated at the Step 2 Hearing.

And, in many cases, the Union files no Article 15.2 Step 2(g) Corrections and/or Additions to the Step 2 decision.

With our Interviews submitted as evidence, the filing of Corrections and/or Additions to the USPS Step 2 decision is particularly important.

Article 15.2 Step 2(g) states:

“If the Union representative believes that the facts or contentions set forth in the decision are incomplete or inaccurate, such representative should, within ten (10) days of receipt of the Step 2 decision, transmit to the Employer’s representative a written statement setting forth corrections or additions deemed necessary by the Union. Any such statement must be included in the file as part of the grievance record in the case. The filing of such corrections or additions shall not affect the time limits for appeal to Step 3 or arbitration.”

Here are some important guidelines for our Corrections and Additions filing:

1. Should USPS present no rebuttal interviews, statements, testimony at the Step 2 hearing, to our Interview Evidence, state that in your Corrections and Additions.
2. Should the USPS make rebuttal argument, unsupported by any evidence at the Step 2 hearing, state that in your Corrections and Additions.
3. Should the USPS make rebuttal argument in the Step 2 decision, unsupported by any evidence at the Step 2 hearing, state that in your Corrections and Additions.

4. Should USPS make rebuttal argument in the Step 2 decision, not made at the Step 2 hearing, state that in your Corrections and Additions.

Our filing of Corrections and Additions is crucial to ensure there is a written record of what the USPS presented and argued – and failed to – during the seminal Step 2 process. Our Corrections and Additions will help to lock the evidence presented into our grievance and lock out USPS rebuttal later.

There will be instances in which we present our Interviews as evidence at the Step 2 hearing - with no prior written inclusion in the Step 2 appeal. This would occur if the Interview was not permitted or did not take place until after our appeal. If this should occur, a written supplement to the Step 2 appeal must be brought to the hearing and submitted in person to the USPS Step 2 designee. Corrections and Additions then must be filed to reflect submission of the Interview at the hearing – unless the USPS Step 2 decision specifically details the Union’s “LIVE” submission of the Interview at the Step 2 hearing. (unlikely)

Management is required to detail its position at Step 2 in its Step 2 decision.

Article 15.2 Step 2(f) states:

“Where agreement is not reached the Employer’s decision shall be furnished to the Union representative in writing, within ten (10) days after the Step 2 meeting unless the parties agree to extend the ten (10) day period. The decision shall include a full statement of the Employer’s understanding of (1) all relevant facts, (2) the contractual provisions involved, and (3) the detailed reasons for denial of the grievance.”

When we reference and include specific interview questions at Step 2 – and they are unrebutted with USPS evidence – such as statements, interviews or “live” witnesses - cite the USPS failure to rebut in your Corrections and Additions. It serves to reemphasize the evidentiary nature of our Interviews as well as USPS failure to present any evidence at Step 2 in rebuttal.

Remember, when incorporating your Interview into the grievance:

1. **INCLUDE** your Request for Information with the name(s) of those interviewed with your Step 2 Appeal.
2. **INCLUDE** your Interviews – both a copy of the original and a clean, word processed copy (if possible) with your Step 2 Appeal.
3. **Cite** specific Questions and Answers and their importance/relationship/role to the Union’s position within your Step 2 Appeal. Cross reference with specific Collective Bargaining Agreement/Handbook-Manual provisions.
4. **Cite** your Request for Information in your Step 2 appeal in the List of Attached Papers as Identified in Item 12 above the Corrective Action Requested section.

5. **Cite** both copies of your Interview in your Step 2 appeal in the List of Attached Papers As Identified in Item 12 above the Corrective Action Requested section.
6. **Ensure** the USPS receives your Interview with the Step 2 Appeal but in no case no later than at the Step 2 meeting.
7. **Respond** with specific Additions and Corrections to any Step 2 decision which does not relate/address Interview evidence contentions of the Union's Step 2 appeal or made at the Step 2 meeting.

CHAPTER 5

STRATEGIC INTERVIEW PREPARATION

Now that we are able to incorporate and meld the Interview into our grievance, we turn to maximizing the Interview as usable evidence.

I. STRUCTURE OF THE INTERVIEW

Having identified the individual to be interviewed there are several steps in actually structuring the Interview. Following each will keep the Steward organized and make formulation of the Interview a progressive process.

A. DEVELOP AN OUTLINE OF INFORMATION NEEDED

This outline will enable the Steward to “set the parameters/boundaries” of the witness. It will keep the focus on the goal of the interview and the best method for reaching that conclusion. It will also prevent deviation and detours which could – and often will – prove fatal to the interview, rendering it useless as evidence in the grievance.

Here are the Outline Elements:

1. INVOLVEMENT/ROLE OF THE WITNESS
2. IMPORTANCE OF THE WITNESS
3. LIMITATIONS OF THE WITNESS
4. CREDIBILITY OF THE WITNESS
5. INFORMATION TO BE EXTRACTED FROM THE WITNESS
6. BEST QUESTION CONSTRUCTION ROUTE(S) FOR THE WITNESS.

1. INVOLVEMENT/ROLE OF THE WITNESS

Here we determine and identify the nature of the witness and where his/her role will lead us. This also helps to keep us focused and prevents our deviating into other areas unnecessary to the Interviewer’s purpose.

What was the person's involvement/role?

Eyewitness?	Concurrer?
Recipient?	Victim?
Author?	Antagonist?
Decision Maker?	Initiator?
Reviewer?	Investigator?

We need to know what role the interviewee played in order to direct our questions in that context.

2. IMPORTANCE OF THE WITNESS

It is best to assess the value of the witness. While we want extreme care to be employed in preparation of all interviews, the reality is some are more important than others. The interviews most critical should be so identified to ensure they receive the most time, attention and effort.

3. LIMITATIONS OF THE WITNESS

Determining the parameters of the interview for a particular witness is crucial for success. Too often questions are asked which generate detrimental responses rendering the Interview – with the valuable responses – useless. If you know a witness will only provide negative (for our purposes) responses to certain questions – do not ask those questions. While this may again seem to be obvious, too often there is an attraction to “going further” or trying for that extra information. If you delve into uncharted territory, without a sense of what you should limit your questions to, you will almost certainly obtain answers tainting, if not destroying, the value of the interview.

It is far better to ask one question too few than one question too many.

4. CREDIBILITY OF THE WITNESS

Your knowledge as a Steward of the players – managers, supervisors, postmasters, employees - is indispensable. You can assess with reasonable certainty an interviewee's anticipated truthfulness or lack thereof. This is particularly important in choosing your best question construction route.

Determining the anticipated credibility of a witness is a critical part of strategic interview preparation.

5. INFORMATION TO BE EXTRACTED FROM THE WITNESS

Here you will list the information you expect to obtain.

For example:

SUPERVISOR SMITH

1. Did not make the Removal decision.
2. Had no authority to resolve at Step 1.
3. Did not conduct a thorough and objective Investigation.
4. Did not conduct a proper Pre-disciplinary Interview.
5. Relied solely upon the Postal Inspection Service's Investigative Memorandum.

This provides the framework from which actual questions will be constructed.

You are not writing your questions – yet. You are giving yourself a guide to refer to and rely upon so as to ensure you know what you are after.

II. BEST QUESTION CONSTRUCTION ROUTES

The formulation of questions can be a tricky business. Our goal is to get the information. Hostile witnesses, friendly witnesses, reluctant witnesses – all these must be asked questions utilizing different methods. While there is no perfect question category, this Section places Question Construction into four (4) separate categories or “routes.” Routes to the goal – the information – so to speak.

They are:

- I “OBVIOUS ANSWER” QUESTIONS
- II “PATHWAY” OR “GRADUAL DIRECTION” QUESTIONS
- III “INNOCENCE” QUESTIONS
- IV “COMPARATIVE” OR “PITTING” QUESTIONS

A. “OBVIOUS ANSWER” QUESTIONS

The following are illustrations of obvious answer questions:

1. In accordance with the requirement of Article 16 Section 8, you received Higher Level Review and Concurrence from Postmaster Smith? Yes.
2. As per Article 16 Section 8 did you have the required Higher Level Review and Concurrence prior to issuing this Removal? Yes.
3. You conducted the required investigation into the grievant's disciplinary record prior to initiating the Notice of Removal? Yes.
4. Your investigation was thorough and objective? Yes.

Another example:

5. You conducted the required meeting with the Local APWU President to discuss ending the 20 year 15-minute break practice? Yes.

Each of the questions appears to reasonably lead to one answer – the obvious answer – “Yes.” If we want “Yes” as an answer to any of these questions, the obvious answer construction would be most appropriate.

Conversely, if we did not want a “Yes” this would be a very poor interview question strategy. Many times we see interviews which ask questions such as the following:

1. Did you conduct an investigation prior to removing Mr. Brown?
2. Did you have concurrence?
3. Did you conduct a Pre-Disciplinary Interview?

And these are all that is asked. Each will most likely result in a “Yes” – and will only reinforce management meeting its Just Cause burden. That Interview is of no use to our purpose.

It is critical that you exercise sound judgment when determining the appropriate application of the “obvious answer” route. “When to” and “When not to” is crucial.

B. “PATHWAY” OR “GRADUAL DIRECTION” QUESTIONS

The following are illustrations of the “Path”:

1. You initiated and issued the Notice of Removal? Yes.
2. The last absence you cited in the Notice of Removal was 3/31/01? Yes.

3. You requested the Notice of Removal via letter dated 4/6/01? Yes.
4. You issued the Notice of Removal dated 4/10/01 to the grievant on 4/11/01? Yes.
5. In between 3/31/01 and 4/11/01 did anyone in management instruct you to issue this removal? No.
6. You had sole authority in issuing this removal? Yes.
7. In between 3/31/01 and 4/11/01 who in management did you have contact with regarding the removal of the grievant? No one.

These questions proved the initiating and issuing supervisor could not have had the required Higher Level Review and Concurrence of Article 16.8.

Without any contact with any manager, Higher Level Review and Concurrence could not have taken place. Notice that no question was asked which referenced Article 16.8 or Higher Level Review and Concurrence.

Another example of the "PATH" –

The last absence you cited in the Notice of Removal was 4/1/05?

Your request for discipline (removal) is dated 4/3/05?

The grievant provided no documentation in support of the absence of 4/1/05?

You had no contact with the grievant between 4/1/05 and 4/3/05?

Through these questions we just proved the grievant was not given a Pre-disciplinary Interview. We did not ask if the grievant had a Pre-disciplinary Interview or if the issuing supervisor conducted a Pre-disciplinary Interview. What we did was lead the supervisor down a path – a gradual direction – to the inescapable conclusion that a Pre-disciplinary Interview could not have taken place with the initiator/issuer of the Removal.

If we had asked, "Did you conduct the required Pre-disciplinary Interview prior to your initiation of the Removal to the grievant?" we probably would have gotten a "Yes." That "obvious answer" question would have been a poor choice for our purpose.

The Pathway strategy will lead to a conclusion we will make - or lead to a refusal to answer by the interviewee. Either way, the Pathway interview - as evidence - is valuable for our argument.

C. “INNOCENCE” OR “AGREEMENT” QUESTIONS

These are examples of “Innocence” questions:

1. The grievant violated the Chapter 6 E&LRM Code of Conduct?
Yes.
2. The purchase of drugs was a violation of the grievant’s employment terms?
Yes.
3. The purchase of drugs was a serious violation of his behavior and conduct?
Yes.
4. You would fire anyone who bought illegal drugs? Yes.
5. You would fire that person – whether the purchase was on the job or off the job?
Yes.
6. You would fire that person whether or not his name appeared in the media as being a Postal employee? Yes.

While appearing to “agree” with the interviewee, we just proved management did not consider as part of its Just Cause burden the required nexus between off duty/premises conduct and USPS employment. We constructed our questions to be in an almost enthusiastic, “agreeing” innocence tone. Without mentioning “nexus” or connection between off duty/premises conduct and employment we just established a critical due process/Just Cause breach by management.

Here are additional “innocence”/“agreement” illustrations:

1. You conducted the required investigation into the grievant’s conduct? Yes.
2. You conducted the required investigation into the grievant’s record? Yes.
3. You checked the Postal Inspection Service’s Investigative Memorandum prior to initiating the Notice of Removal? Yes.
4. You relied upon the Investigative Memorandum narrative of Postal Inspector Jones? Yes.
5. Postal Inspector Jones’ narrative was an accurate reflection of the Postal Inspection Service investigation, wasn’t it? Yes.

The supervisor admitted he relied upon the Postal Inspection Service narrative as an accurate reflection of the Postal Inspection Service’s investigation. If we determine the

Postal Inspection Service editorialized, amended or prejudiced the facts vs. the grievant, then the USPS investigation is also tainted and prejudiced against the grievant.

Another example:

1. Mr. James refused your instructions to report to registry? Yes.
2. Mr. James' refusal was in violation of Chapter 6 of the E & LRM? Yes.
3. Mr. James was blatantly insubordinate? Yes.
4. You placed Mr. James on Emergency Placement in Off-Duty Status due to his blatant insubordination? Yes.
5. You placed him due to his willful refusal to obey your instructions? Yes.
6. His behavior also violated Chapter 6's Conduct Regulations? Yes.
7. You also placed him due to these "conduct" violations? Yes.

We just proved the Emergency Procedure in Off-Duty Status was imposed for reasons outside the parameters of Article 16.7. The Emergency Procedure was thus in violation of Article 16.7. We did not ask, "For which reason in Article 16.7 was Rob James placed in off duty/off premises?"

As you can see the "innocence" question will draw the interviewee into a sense of comfortability from which we will very likely extract beneficial evidence.

D. "COMPARATIVE" QUESTIONS – "PITTING" WITNESSES VS. WITNESSES

This construction route compares or "pits" witnesses against one another. This could occur in the following witness categories:

- A. POSTAL INSPECTION SERVICE VS. MANAGEMENT
- B. MANAGEMENT VS. MANAGEMENT
- C. BARGAINING UNIT EMPLOYEES VS. MANAGEMENT
- D. BARGAINING UNIT EMPLOYEES VS. BARGAINING UNIT EMPLOYEES

Some illustrations of "pitting":

1. You met with Ms. Jones to give your concurrence? Yes.
2. You met in Ms. Jones' office? Yes.

3. You met on what date? August 20.
4. Who else was present? No one.
5. What documents did Ms. Jones show you for your review? The Removal Notice.
6. Did Ms. Jones conduct the required pre-disciplinary interview before you met with her for review and concurrence? I don't know.
7. Did you ask her if she had conducted the Pre-disciplinary Interview? No.
8. Did Ms. Jones receive the Postal Inspection Service's Investigative Memorandum prior to her initiation of the Notice of Removal? I don't know.
9. Did you ask her if she received the Postal Inspection Service's Investigative Memorandum prior to initiation of the Removal? No.
10. Did Ms. Jones present the Postal Inspection Service's Investigative Memorandum to the grievant at the Pre-disciplinary Interview? I don't know.
11. Did you ask her if she presented the Postal Inspection Service's Investigative Memorandum to the Grievant at the Pre-disciplinary Interview? No.
12. You last gave your concurrence then and there? Yes.

We would then question the initiating/issuing Supervisor along the same lines as we questioned the Higher Level Reviewing & Concurring Authority. Some of those questions would be:

1. Did you receive concurrence in person or over the phone? Over the phone.
2. On what date? August 17th.
3. Did Mr. Toms ask you if you had conducted a Pre-disciplinary Interview prior to Removal's initiation? Yes.
4. Did Mr. Toms ask you if you had received the Postal Inspection Service Investigative Memorandum prior to initiation of the Notice of Removal? Yes.
5. Did Mr. Toms ask you if you had presented the Postal Inspection Service Investigative Memorandum to the grievant at the Pre-disciplinary Interview? Yes.

As you can see when we ask related/same questions of two different witnesses, the answers may be different and may provide very compelling evidence of Collective Bargaining Agreement violations or Due Process/Just Cause breaches.

Regardless of which route you choose for a particular witness or what line of questions – in whatever combination - careful forethought and preparation is the key to conducting the Interview and transforming it into useful Evidence.

Hundreds of additional Interview question illustrations are available for your review within the twenty-one chapters of my *Defense vs. Discipline* Strategy Book.

CHAPTER 6

INTERVIEW DOs AND DON'Ts

1. Avoid open-ended, “give the witness a chance to explain” questions.
2. Keep responses as short and to the point as is possible.

Remember, you have to write the responses. Once you ask “why” or “explain,” you cannot limit or set the parameters for the response. You probably will not be able to keep up and write the answer/response accurately with the interview now becoming your summary. This will not be valuable and effective as evidence.

3. Orchestrate and Conduct the Interview. You decide what to ask and what not to ask. If you believe a question may generate a less than useful response – don’t ask that question.
4. Don’t always go for the “touchdown.” If you have asked 10 questions which clearly prove no thorough and objective investigation took place, do not attempt to get satisfaction with, “So, you did not do any investigation at all, did you?” This is unnecessary. If the 10 questions prove no thorough and objective investigation, then we will state the conclusion. We do not need to give the interviewee a chance to recover when we already have the conclusion.
5. Pre-Interview statements of witnesses and Pre-Interview documentary information will often be helpful in your determination of questions to be asked in the interview. Requesting statements or documents and then later conducting interviews will enable you to better “steer” your witness in the desired direction based upon background information in your possession. Having foreknowledge in interview preparation is crucial.
6. Only give management the evidence you are using. If you conduct an interview and it goes badly or if you decide it does not rise to the level of beneficial evidence, do not give it to management. You are not required to – and you must not – give information to the USPS which you are not utilizing/relying upon as evidence.

Under our Collective Bargaining Agreement, the Postal Service has no entitlement to information we generate as part of our investigation which we are not using in our grievance.

7. Choose the best place to conduct your interview. A convenient, quiet place is best if at all possible. You and your witness will not feel as hurried to finish allowing a thorough interview to take place.

And Remember:

8. Do record the exact responses to prewritten and extemporaneously produced questions.
9. Do include a copy of the Request for Information with your Step 2 Appeal.
10. Do include both a copy of the original interview and a word-processed, clean copy with your Step 2 Appeal.
11. Do cite specific Questions and Answers and their importance/relationship/role in the Step 2 Appeal body of contentions –with cross references to the Collective Bargaining Agreement.
12. You must include the Request for Information and both copies of the Interview in the “Attached Papers” section of your Step 2 Appeal.
13. You must ensure the USPS receives interviews with your Step 2 Appeal or not later than at the Step 2 meeting.
14. You must respond with specific corrections and additions to any Step 2 decision which does not relate/address the interview contentions of the Union made in the Step 2 Appeal or made at the Step 2 meeting.

And last, but not least:

15. Do not provide copies of your Interviews to Interviewees. Often management and other witnesses will request and sometimes insist on a copy of the interview upon completion. At times management will state no interview will take place unless a copy is provided. You are not required to provide it. Do not provide it. All evidence the Union will rely upon in support of our grievance must and will be presented at the Step 2 hearing. Witnesses including management are not individually entitled to our Interviews upon completion.