
APWU

AMERICAN POSTAL WORKERS UNION, AFL-CIO

EFFECTIVE GRIEVANCE WRITING
EDITION 2

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TELLING THE STORY - AS GRIEVANCE

The written grievance really is a story - non-fiction, of course.

It is an account of something that has happened
- something that constitutes a violation of our collective bargaining agreement.

It is for the steward to make use of the written word
- whether artfully or not -
to tell the story of what has happened.

If this story fully explains what has taken place
- and how that has violated the agreement -
the grievance has improved chance of success.

THE APPROACH

- How you approach a task very often dictates how well the job gets done.
Sometimes it is just attitude -
sometimes it is more a matter of technique.

The approach to writing a successful grievance is some of both:

Attitude -

Set your mind to a simple task of
- laying out the facts of what has happened
- pointing to contractual provisions that govern the action
- describing how management's actions are contrary to the contract

Avoid exploiting the grievance procedure

- to vent emotions
- to make attacks on management or individual managers
- to preach

Remember the grievance procedure is a means of conducting business. Your efforts here should be directed toward simply accomplishing clear, hard business objectives. While it is true you will sometimes deal with factual circumstances in which individual lives have been affected on a very personal level, it is also true that everything in the grievance procedure starts (and generally ends) with facts.

Technique -

- Collect the factual evidence of what has happened.
- Organize the facts in a logical, easily understandable way.
- Research the contract, manuals, handbooks, policies, etc. for appropriate governing language.
- Tell the story.

Your technique will be unique to your own background, education and personality; however, it should flow from your attitude about what your task is as a steward of the contract. That task is as a teller of a story, as a representative of the Union, as a representative for the aggrieved. You are a worker, a gatherer of facts, a purveyor of the truth - the simple, hard truth.

FINDING THE WORDS

- First and foremost, you need facts and factual evidence that may be relied upon to prove the facts.

You have often had the experience of *knowing* that something has happened without having hard evidence in hand to prove it to yourself. "It's just common sense. . . Everybody knows that! . . . It's so obvious."

- **Knowledge** is not **Fact**

A short anecdote:

I was involved in processing a grievance concerning the use of Custodial Laborers to search for mail under rotary sack holders by means of partial disassembly of the floor of each machine. The Service was pleased with itself that additional cleaning of the area would simultaneously be accomplished.

Service officials **knew** and the Union **knew** the primary purpose of the new route was mail search. Because "everybody knew that" the fact and factual evidence that would prove that fact were never addressed in the grievance.

By the time the grievance reached arbitration, the Service recognized it could not win - unless, that is, the primary purpose of the route was actually cleaning. For the first time ever, the Service claimed the primary purpose was cleaning, not mail search. By that time assembling facts and factual evidence was out of the question. All we had was dispute in testimony about what the intended purpose was. We lost.

The truth of the matter is not nearly as important as the ability to prove that truth.

- Second, organize the facts and factual evidence. Outline the facts in a logical order, tying the factual evidence by which the facts may be proved to the facts of the case.

This order may be a time sequence or it may be according to certain topics that need explanation. Generally a time sequence is important to a clear, coherent explanation of the grievance story. Whenever possible order the facts chronologically.

- Third, with the facts in hand, find all contract provisions, handbook and manual regulations, policy statements, etc. that govern the actions of the Service and the grievant(s).

Organize these elements in a fashion similar to your organization of the factual evidence, so that you will be able to bring into the story of the case appropriate governing language as needed to make the point.

- Fourth, know your objective. A discipline grievance is directed at showing the Service failed to prove its case. A contract grievance is directed at proving a violation of the Agreement.
- Now, it's time to tell the story.

While this description may seem overly involved, the work need not be. Some grievances will be clear and concise in your mind; the recitation of the facts and evidence in support will be on the tip of your tongue; and contractual provisions needed to support the argument will be evident. You will not need to go to any great lengths to get organized before starting to write.

However, in many cases, neglecting to get organized will lead to omissions and errors. In any event double check yourself or have another steward or officer check your approach and execution.

The Standard Grievance Forms

Both the Step 1 grievance outline worksheet and the Step 2 Appeal form reflect the basics of what you will need to do to write a successful grievance.

1. Fill in the blanks - all of them.
Settlement of many grievances is hampered by a steward's failure to provide all the basic data requested in blocks 1. through 10. This really is basic data. It is an accounting of certain elemental **facts** necessary for an understanding of the case.

2. In block 11 list those contractual, handbook, manual, policy and other provisions upon which you intend to rely - especially those which you intend to prove have been violated.
3. Tell the grievance story.
4. Prescribe the appropriate remedy.

TELLING THE STORY

FIRST, AND FOREMOST, KEEP IN MIND AT ALL TIMES THAT YOU ARE WRITING FOR SOMEONE WHO KNOWS ABSOLUTELY NOTHING ABOUT THE CASE YOU HAVE TO PRESENT.

- THAT PERSON IS THE ARBITRATOR - THE ARBITRATOR COMES TO A HEARING WITH NO ADVANCE KNOWLEDGE OF A CASE; WHAT HE READS IN THE STEP 2 APPEAL AND THE OTHER MOVING PAPERS OF THE GRIEVANCE MUST FULLY EXPLAIN THE CASE.

Special Considerations in The Discipline Grievance -

In many ways, the discipline grievance is the simplest form of grievance. In it we need only rebut the action the Service has initiated.

- The Service has made itself the moving party in the action. It must prove its case. We need only demonstrate the Service's failure to do so.

- What the Service must prove is that it established *just cause* to issue discipline before reaching its decision. The basic yardstick for measuring whether or not the Service has established *just cause* is the "**Seven Tests of Just Cause**".

- *Each discipline grievance is written against the backdrop of the Seven Tests*

What is the rule allegedly violated by the Grievant?

- Was the rule well known,
- Communicated directly to the Grievant,
- Include warning of consequences for violation?

Was the rule reasonably related to orderly, efficient and safe conduct of business?

- Was the rule actually a managerial order,

- Was it clearly a business instruction that a supervisor could reasonably expect to have obeyed,
- Would there have been a significant danger posed in following the order?

Did the supervisor conduct a thorough investigation?

- Did the supervisor actually ascertain the Grievant disobeyed a rule or order,
- Was the Grievant confronted for his side of the story prior to the decision to issue discipline?

Did the supervisor's investigation establish clear and convincing evidence the Grievant was guilty?

- Was the Grievant guilty of an infraction or did he simply make a mistake,
- What constitutes the supervisor's proof of guilt?

Was there fairness, reasonableness and equity in the investigation?

- Was the rule or order fairly and equitably administered to all,
- Did the supervisor's investigation deal fairly and equitably with the Grievant,
- Is there fair and equitable enforcement for violations of the rule or order?

Was the level of discipline appropriate?

- Was progressive discipline called for,
- Or was the level of infraction such as to warrant departure from progressive discipline,
- Were there other measures available that would have been more truly corrective,
- Was the Grievant's history given credit to mitigate the penalty?

Was the discipline administered timely?

- Did the supervisor act promptly upon knowing of the possible infraction,
- Did delays in administering discipline destroy any corrective effect?

Start with the basics -

- Describe what event has occurred that has prompted this grievance.

Example 1: *On January 1, 1997, the Grievant was issued a Notice of Suspension of 14 days or less. This notice informed the Grievant he would be suspended for a period of seven (7) calendar days from January 21 through January 31, 1997. The Notice of Suspension charged the Grievant with "Failure to Maintain a Regular Work Schedule"; it cited eight (8) alleged incidents of unscheduled absence during the period from September 28, 1996 through December 20, 1996.*

Example 2: *During the Labor-Management meeting of February 19, 1997, the Union was informed by the installation head that a decision had been made to solicit a contract for the performance of certain postal equipment modification. The Union received a copy of a letter from the District Lead Plant Manager, addressed to the installation head, stating that authorization was granted for the expenditure of funds to let a contract for the movement and relocation of three Delivery Bar Code Sorters (DBCS) within the installation.*

Example 3: *On Wednesday, February 12, 1997, the Service posted a revised holiday schedule for the President's Day Holiday, February 17, 1997. This schedule increased the number of clerks scheduled on all three tours of the holiday by two (2) on each tour and increased the number of clerks scheduled on Tour 2 for both days prior to the holiday by one (1) for each day. The Union advised the installation head that the addition of personnel to work the holiday would require the payment of holiday scheduling premium. The installation head responded that he would not pay any additional premium for employees he needed for the operation.*

- Discuss the details of what occurred. Flesh out the story.

In *Example 1*, discuss the details of the list of absences. Were some incorrectly reported on the discipline letter? Were there eight (8) listings, but only five actual absences? Were some of the absences not actually *unscheduled*?

Describe the Grievant's history and any mitigating personal circumstances that are pertinent to a consideration of the case. Explain the Grievant's prior discipline record and be specific about any grievances that were filed on prior discipline. If there are outstanding grievances yet unresolved, explain. . . .

In *Example 2*, describe the nature of the work to be contracted. Discuss what information the Union has tried to get from the Service and what the result has been. Explain what other information is needed for appropriate consideration of the contract and of the grievance. If applicable describe similar work that has previously been performed by the bargaining unit. List the specific occupational groups in the installation who could have and should have been used for the work. . . .

In *Example 3*, give full details of the discussion with the installation head. List those employees who were added to the holiday schedule. Address any operational "needs" claimed by the Service. Describe the relative seniority, volunteer status, etc. that might have a bearing on who should or should not have been included in the schedule. Discuss what work was performed on the days in question. Give details if employees were released early. . . .

In other words, thoroughly describe

- **who** did **what**,
- **how** it was done and
- **where** and **when** the events occurred.

This really should not take much more than four or five short paragraphs, unless there are a lot of details that need to be covered; however, the essential facts of most cases cannot be stated in the confines of the item 12 block on the Step 2 Appeal form.

- Explain what contractual, manual, handbook or other regulatory provisions govern the fact circumstances of the case.

Be specific - *Article 16, Section 1, of the National Agreement requires that discipline be corrective and not punitive and that no one receive discipline except for just cause. . .*

Subcontracting of postal equipment maintenance work is governed by the provisions of the Administrative Support Manual (ASM), part . . .

The National Agreement requires at Article 11, Section 6.B., that as many employees as can be spared be excused from work on the holiday. . .

Do not be afraid to quote directly certain portions of the governing language. However, be precise, do not misquote. The language says what it says. If you quote, show it as a quote.

Make your contract and regulatory references specific. You may have a broad list of articles of the Agreement in Item 11 of the Step 2 Appeal form to be sure to cover all possibilities. In your discussion though, be specific. Explain yourself.

- Analyze how what the Service has done violates the provisions which you have cited as governing.

This is the most difficult part. It takes practice. It takes patience. It takes *reading*.

One of the most useful exercises a steward can perform in order to develop skills in the analysis of the violations demonstrated in the Service's action is reading arbitration decisions. What we pay arbitrators great sums of money to do is to analyze what has happened against what should have happened.

- What the arbitrator writes in his or her award should correspond to what the steward writes in the Step 2 Appeal.
- This is not to say the steward should learn to mimic an arbitrator's style or vocabulary. Parrots are great mimics, but none is an orator.
- Learn how arbitrators think, how contract language is construed in its application to fact circumstances.
- That learning will translate into skill in the articulation of similar analysis.
- It will also help the steward recognize when he does *and when he does not* have a sustainable case.

- **Do not ask questions in the grievance.** The grievance seeks resolution based on facts and factual evidence.

- Questions are not **FACTS**.
- Questions are not **FACTUAL EVIDENCE**.
- Questions are not **RESOLUTIONS**.

Describe facts.

Rely upon factual evidence.

Propose resolutions.

The Hazard of Neglecting the "Detailed Statement of Facts" -

The viability of any grievance may be jeopardized by the steward's failure to make a sufficient "detailed statement of facts".

- The Service has challenged and may be expected to continue to challenge grievances on procedural grounds for the Union's failure to meet the obligations imposed by Article 15 of the National Agreement.
- If the statement of facts is sufficiently non-specific it may be impossible for anyone to identify what occurred.
- If one cannot tell what occurred, when, where, to or by whom the grievance has failed to identify a violation of the Agreement.

The only purpose of the grievance procedure is to identify a violation of contractual rights and to thereby seek redress. It is not for the purpose of complaining.

THE REMEDY

Some stewards feel that determining what remedy to request is the most difficult part of writing the grievance. This should not be the case if certain principles are kept in mind.

- The theoretical purpose and scope of remedy in arbitration.
- The intended impact of the requested remedy.
- What measure of remedy it would take to halt future violations.
- Practicality.

Theory of remedy -

- Return the parties, especially the aggrieved to the *status quo ante* - that is, back to the conditions that existed prior to and absent the violation.

Intended impact -

- Is there some exaggeration desirable to call attention to this particular grievance?
- Asking for more than expected may give tactical advantage in negotiation of settlement.

Injunctive effect -

- There is no injunctive relief provided in the contract or in the law for 99.9% of contractual violations.
- Monetary remedies generally create disincentive to future violations.

Practicality -

- Generally be realistic, thorough, as precise as possible and as broad as necessary.

In the vast majority of grievances, the remedy should be designed to return the grievant(s) to the *status quo ante*, based upon realistic analysis of the impact of the violation.

However - money talks!

Discipline Remedies -

- ***NEVER, EVER*** request that a lesser discipline be substituted for the discipline being challenged!!

Request -

- Rescind the discipline.

- Expunge the discipline and any and all references thereto from any and all records and files.
- Compensate the grievant for any and all losses incurred as a result of the discipline, whether known or unknown as of the filing of this grievance.
- Return the grievant to his/her position with no loss of rights or benefits [Removal cases].
- Make the grievant whole.

Contractual Remedies -

The specific facts and evidence of the grievance point to gains and losses.

- Analyze the facts
- Make a list of who lost what
- Identify what the Service gained

What was lost -

- Grievant failed to receive a contractual right or benefit due to a Service action.
- What the grievant lost became an unjust enrichment for the Service - an ill-gotten gain.
 - What was lost must be restored.
 - What the Service gained it must lose.

Contractually prescribed premium -

- Certain overtime violations have specifically defined remedies spelled out in the Agreement.
- Other scheduling circumstances or deviations also have defined premiums.
- Higher level compensation is dependent upon identification of an appropriate bargaining unit position designation or occupational group.

- *Where the collective bargaining agreement, or prior settlements between the parties have specified appropriate remedy, integrity demands consistent application of those remedies.*

By and large, there are very, very few remedies spelled out anywhere for violations of the Agreement. There is no laundry list. The Service, however, cannot escape remedy because of silence in the contract. Every violation of the contract is susceptible to appropriate remedy.

Impact of Item 13 in Arbitration -

The general rule -

If the grievance does not ask for it,
the Arbitrator will not award it.

Arbitrators have sometimes excused themselves from applying an appropriate remedy to a grievance solely because of the Union's failure to include a specific element of remedy - such as, backpay for unwarranted disciplinary action.

CORRECTIONS OR ADDITIONS TO STEP 2 DECISION

The National Agreement permits the Union's submission of "corrections or additions deemed necessary by the Union" for specific purpose:

"If the Union representative believes that the facts or contentions set forth in the decision are incomplete or inaccurate . . ."

Real Purpose -

- Address errors or omissions in the Step 2 Decision letter
 - Specific points discussed during Step 2 discussion
 - Material facts or evidence that developed after the filing of the Step 2 Appeal
- Offer rebuttal to Step 2 Designee's version of facts, contentions, and contractual provisions involved
 - Correct misrepresentations of Union position
 - Offer counter argument and evidence

The corrections or additions is not intended to substitute for a well thought out and presented Step 2 Appeal.

Do not waste the opportunity by simply restating what has already been adequately argued and discussed in the Step 2 Appeal document.

- Analyze the Step 2 Designee's decision letter
- Determine whether or not the Designee has satisfied the requirements of Article 15, Section 2, Step 2:(f)
 - If not, argue the bar against further development of the Service's case
 - If so, rebut **if necessary**

Because the Union is afforded this opportunity of rebuttal, an arbitrator will draw a negative inference from a failure by the Union to take advantage of the opportunity. . . Unrefuted assertions of the Step 2 Designee may stand as irrefutable.

USPS version of what a grievance package should include

CONTENTS OF GRIEVANCE PACKAGE

CONTRACT CASES

1. Grievance Chain with Step 2 Decision
2. PS Forms 2608 (Step 1) and 2609 (Step 2)
3. Copy of any Time Extension Agreements
4. Postal Regulations, Postings, Facility Policy Letters
5. Local Memorandum of Understanding
6. Crossing Craft Issues:
 - a. Clock Ring Reports for cited employees
 - b. Scheduling Reports for craft/employees involved
 - c. Description of work performed, and by whom
 - d. Statement of situation or surrounding circumstances
 - e. Staffing/Complement of employees for each craft
 - f. List of employees absent, on light/limited duty for the dates/period of time in grievance
 - g. Other supporting documentation

Article 1.6B Issues

 - h. Postmaster's Job Description
 - i. Historical Data of work involved in grievance
 - j. Analysis of craft workhours (1 year prior to grievance)
 - k. Budget Hours
7. Overtime Issues:
 - a. Overtime Desired List
 - b. List of employees who worked overtime with their craft
 - c. Forms 3996 and 3997 for dates in question
 - d. Mail volume Reports
 - e. Clock Ring Reports
 - f. List of employees on leave or light/limited duty
 - g. List of employees assigned mandatory OT with rotation
 - h. Explanation why non-OTDL employees were working
 - i. Window of Operation Documentation (Dispatch of Value times, cut-off times, local policies)
 - j. Other supporting documentation
8. Denial of FMLA Requests:
 - a. Forms 3971 for all dates denied
 - b. Form 3972 (if current)
 - c. WH-380 or any supporting documentation submitted
 - d. Documentation that employee was informed of Pub 71
 - e. Eligibility documentation (1250 workhours)
 - f. Supervisor's Statement - reasons for denial of request
 - g. Other supporting documentation
9. Denial of Light Duty Issues:
 - a. Light Duty request and job offer(s)
 - b. Relevant Medical Documentation
 - c. Mail Volume Reports and Overtime Percentages
 - d. Staffing/Scheduling Reports
 - e. Applicable LMOU provisions
 - f. Clock Ring reports for employees involved
 - g. Supervisor's Statement - reasons for denial of request
 - h. Other supporting documentation

10. **Monetary Shortages:**

- a. Letter of Demand
- b. Actual Audit (Form 3294)
- c. Audit History (Form 3368)
- d. Key Check verification (Form 3977)
- e. Form 1908's generated during audit period
- f. Form 1412's generated during audit period
- g. Investigative Memorandum (if applicable)
- h. Bank Statement indicating incorrect deposit
- i. Form 1903-DZ (data center) (if applicable)
- j. Dates of Discussions with grievant and subject
- k. Discipline issued (if applicable)
- l. Supervisor's statement - witnessed non-performance of reasonable care
- m. Other supporting documentation

11. **Route Inspection Issues:**

- a. Copies of all Extensions granted in accordance with 211.3 (M-39) involving the 52 day completion period
- b. Form 1840-B (8-week analysis)
- c. Form 1838 & 1838-C (carrier's count of mail)
- d. Form 3999 (inspection of letter carrier route)
- e. Form 1840 (summary of count and inspection)(used in grievances involving selection of office and street times, section 242.321 of the M-39)
- f. Documentation of Carrier Consultations
- g. Documentation of Dry Runs
- h. Section 271g issues - Supervisor's Statement of reasons for denial along with job discussions and discipline (if applicable)
- i. Relevant DSIS Reports (such as workhour/workload analysis)
- j. DPS Impact documentation
- k. Other supporting documentation

12. **Maintenance Issues:**

Cross Craft/Cross Occupational Group Grievances

- a. Position/Job Description/Level/Qualification Standards
- b. Relevant references from article 38
- c. Relevant references from Chapter 5, of the ASM
- d. Relevant Maintenance Orders (i.e. 21-91)
- e. Relevant Memorandums of Understanding (i.e. Workforce Realignment)
- f. Maintenance Selection System excerpts (if applicable)
- g. Clock Rings reports for all employees involved
- h. Other supporting documentation

Custodial Staffing Issues

- a. MS-47 Handbook - sections 111, 116, 122, 124, 125, 140, 142, 412, 415
- b. Forms 4852,4839,4869
- c. Complete Custodial Staffing Package (which represents the amount of time designated for cleaning activities by unit frequencies)
- d. Other supporting documentation

Maintenance Subcontracting Issues

- a. Specific Analysis of Article 32 considerations by management prior to decision to subcontract the work in dispute. In other words did management "give due consideration to public interest, cost efficiency, availability of equipment and qualifications of employees when evaluating the need to subcontract"
- b. Specific Analysis of Part 535 of the ASM which lists the criteria for subcontracting of maintenance work. Part 535 of the ASM provides the following: Maintenance of postal equipment should be performed by USPS personnel, whenever possible, except where capable personnel are not available or where a commercial firm is the only practical source of needed expertise due to the novelty or complexity of the equipment
- c. All other relevant documentation incident to the grievance including copies of the contract awarded to the outside firm

13.

RI--399 Issues:

- a. A determination must be made at the outset whether the case is actually a legitimate RI--399 issue or a cross craft grievance. This can be accomplished by ascertaining which craft performed the work prior to April 29, 1992, which is the cut-off date for jurisdictional grievances established by the National Level Memorandum of Understanding between the USPS, APWU, and the NPMHU.
- b. A review of the operations inventory for each mail processing unit must be conducted to establish which craft had jurisdiction at the time of the local signing between the APWU and the Mailhandlers.
- c. On any claim or grievance that alleges entitlement to work that has been previously performed by the opposing craft, there must be an analysis of whether this work meets the criteria of new work or an operational change. Those are the only two criteria that permit a tripartite discussion at the local level on which craft should be considered as the primary craft.
- d. If there is a legitimate dispute between the local parties as to whether the case involves an interpretation of RI--399 provisions or application, the case should be referred to the Regional Dispute Resolution Committee for adjudication. The Regional Committee will remand a 399 case to the LDRC for discussion and settlement if it deems it appropriate.
- e. The Local Dispute Resolution Committee must ~~provide a complete and detailed~~ narrative description of the operation in dispute along with a completed operations inventory. Any other information that may have an impact on operations should also be included in the case file as well. This could include the deployment of new automated equipment, that could result in staffing changes and craft reassignments.
- f. When processing a RI--399 case, local management can establish jurisdiction by addressing the following question:

Is the work in question normally performed by the mailhandler or clerk craft?

Example 1: *Dumping of mail is designated as mail handler work under function 3 in operation 010.*

Example 2: *The identification and handling of presorted and riffle mail is designated as clerk craft work under function 5 of operation 020.*

Example 3: *The acceptance, classification, and computation of postage on second and third class mail is designated as clerk craft work under function 1 of operation 001 (Note: In offices where the tasks of obtaining empty equipment, obtaining unprocessed mail, loading ledges, sweeping and containerizing is an integral part of the distribution function, the entire operation is a function of the primary craft performing the distribution).*

NEW EVIDENCE or NEW ARGUMENT

Challenges by both the Union and by the Service to evidence or argument raised for the first time in arbitration have been addressed more than once in National level arbitration. And the decisions by Arbitrators Benjamin Aaron and Richard Mittenthal reflect the way arbitrators may be expected to deal with the issue. In case **NC-E-11359**, January 25, 1984, Arbitrator Aaron dealt with a challenge by the National Association of Letter Carriers (NALC) that certain of the Service's arguments and evidence in that case should be barred as new:

It is now well settled that parties to an arbitration under a National Agreement between the Postal Service and a signatory Union are barred from introducing evidence or arguments not presented at preceding steps of the grievance procedure, and that this principle must be strictly observed. The reason for the rule is obvious: neither party should have to deal with evidence or argument presented for the first time in an arbitration hearing, which it has not previously considered and for which it has had no time to prepare rebuttal evidence and argument. The spirit of the rule, however, should not be diminished by excessively technical construction. The evidence establishes to my satisfaction that [the employees] were well aware from the outset of the reason . . . contrary to the terms of the MOU. NALC is therefore in no position to claim surprise by the testimony and argument offered by the Postal Service during the arbitration hearing. [emphasis added]

Previously, in **H8N-5B-C 17682**, April 12, 1983, Arbitrator Aaron had been asked to address the same issue. In that case the NALC challenged the Service's attempt to raise "new argument" at the arbitration hearing on a matter of overtime scheduling. Arbitrator Aaron states, in upholding the NALC challenge:

" . . . The Postal Service advanced other, more credible arguments at the arbitration hearing to support the reasonableness of its decision to assign the disputed work to Summers, but none of these except the later delivery of mail had been raised during earlier steps of the grievance procedure. I am fully in agreement with Arbitrator Mittenthal that the provisions of Article XV requiring that all of the facts and arguments relied upon by both parties must be fully disclosed before the case is submitted to arbitration should be strictly

enforced. Although there is some question in my mind that all of the overtime work in this case, if pivoted as the Union asserted it should have been done, could have been completed before dark, the Postal Service waived its right to dispute the Union's claim by failing to challenge it directly in the grievance procedure. Accordingly, I shall grant the remedy requested. [emphasis added]

In support of its position, the NALC referred to the decision by Richard Mittenenthal in **H8N-5L-C 10418**, September 21, 1981, wherein he refused to consider an argument raised for the first time at the arbitration hearing:

"There remains the Postal Service's claim that the local clause in question is "inconsistent or in conflict with" Article XIII which concerns "assignment of ill or injured regular work force employees." The difficulty here is the lateness of this argument. Article XV describes in great detail what is expected of the parties in the grievance procedure. The Postal Service's Step 2 decision must make a "full statement" of its "understanding of . . . the contractual provisions involved." Its Step 3 decision must include "a statement of any additional . . . contentions not previously set forth . . ." Its Step 4 decision must contain "an adequate explanation of the reasons therefor." In this case, the Postal Service made no mention of Article XIII in Steps 2, 3 and 4. Its reliance on this contract provision did not surface until the arbitration hearing itself. Under such circumstances, it would be inappropriate to consider this belated Article XIII claim." [emphasis added]

Keeping in mind the admonition of Arbitrator Aaron, "***The spirit of the rule, however, should not be diminished by excessively technical construction.***" it should be noted that in each of these discussions, the thrust of the prohibition against entertaining "new argument" is that it applies where the argument surfaces only for the first time at the arbitration hearing. The bar against considering a party's argument is premised on the fact that the party failed to raise the argument throughout the earlier processing of the grievance. In such a circumstance the other party may claim to be surprised by the alleged "new argument". And an arbitrator may be expected to refuse to consider the argument or the evidence in support of it.

Chapter 10 - Standards for Interpreting Contract Language

. . . the standards of construction as used by arbitrators are not inflexible. They are but "aids to the finding of intent, not hard and fast rules to be used to defeat intent." Parties probably expect arbitrators to be less circumscribed by rigid rules of construction than the courts, and this helps to protect against harsh and unworkable results. [p298]

The rule primarily to be observed in the construction of written agreements is that the interpreter must, if possible, ascertain and give effect to the mutual intent of the parties. The collective agreement should be construed, not narrowly and technically, but broadly and so as to accomplish its evident aims.

In determining the intent of the parties, inquiry is made as to what the language meant to the parties when the agreement was written. It is this meaning that governs, not the meaning that can be possibly read into the language. [pp302,303]

Arbitrators strive to give effect to the collective agreement rather than to dismember it, and, whenever two interpretations are possible, one making the agreement valid and lawful and the other making it unlawful, the former will be used. The parties are presumed to have intended a valid contract. [p305]

It is said that the "primary rule in construing a written instrument is to determine, not alone from a single word or phrase, but from the instrument as a whole, the true intent of the parties and to interpret the meaning of a questioned word or part with regard to the connection in which it is used, the subject matter and its relation to all other parts or provisions." (Riley Stoker Corp., 7 LA 764, 767 (Platt, 1947)) [pp307,308]

If an agreement is susceptible of two constructions, one of which would work a forfeiture and one of which would not, the arbitrator will be inclined to adopt the interpretation that will prevent the forfeiture. [p312]

[Black's Law Dictionary, Sixth Edition - **Forfeiture**: *A comprehensive term which means a divestiture of specific property without compensation; it imposes a loss by the taking away of some preexisting valid right without compensation. . . A deprivation or destruction of a right in consequence of the nonperformance of some obligation or condition.*]

It is widely recognized that if a contract "is clear and unambiguous it must be applied in accordance with its terms despite the equities that may be present on either side." Arbitrators strive where possible, however, to give *ambiguous* language a construction which is reasonable and equitable to both parties rather than one which would give one party an unfair and unreasonable advantage.

The arbitrator, it has been said, should "look at the language in the light of experience and choose that course which does the least violence to the judgement of a reasonable man." [p320]

Chapter 12 - Custom and Past Practice

One of the most important standards used by arbitrators in the interpretation of ambiguous contract language is the custom or past practice of the parties. Indeed, use of past practice to give meaning to ambiguous contract language is so common that no citation of authority is necessary. The general attitude of arbitrators is illustrated by Arbitrator Charles C. Killingsworth, who, in noting that the parties had operated under a provision for nearly three years before requesting an arbitrator to interpret it, stated that he had "a context of practices, usages, and rule-of-thumb interpretations by which the parties themselves" had gradually given substance to the disputed term. . .

Where practice has established a meaning for language contained in past contracts and continued by the parties in a new agreement, the language will be presumed to have the meaning given it by that practice. It has been stated:

"There would have to be very strong and compelling reasons for an arbitrator to change the practice by which a contract provision has been interpreted in a plant over a period of several years and several contracts. There would have to be a clear and unambiguous direction in the language used to effect such a change." (Webster Tobacco Co., 5 LA 164,166)



STEP 2
GRIEVANCE
APPEAL FORM

AMERICAN POSTAL WORKERS UNION, AFL-CIO

1 DISCIPLINE (NATURE OF) OR CONTRACT ISSUE: Denied stewards time	CRAFT MAINT.	DATE 4/10/96	LOCAL GRIEVANCE 1	USPS GRIEVANCE 1
2 TO USPS STEP 2 DESIGNEE (NAME & TITLE) DESIGNEE; E. & L.R. REP OR P.M.	INSTALLATION/SEC. CER./BMC			PHONE
3 FROM LOCAL UNION (NAME OF)	ADDRESS	CITY	STATE	ZIP
4 STEP 2 AUTHORIZED UNION REP. - (NAME & TITLE)	AREA CODE PHONE (OFFICE)	AREA CODE PHONE (OTHER)		
5 LOCAL UNION PRESIDENT	AREA CODE PHONE (OFFICE)	AREA CODE PHONE (OTHER)		

WHERE - WHEN STEP 1 MEETING & DECISION MET WITH

6 UNIT/SEC. BR. STA/OFC BEM MAIN	DATE/TIME	USPS REP - SUPR	GRIEVANT AND/OR STEWARD	
7 STEP 1 DECISION BY (NAME & TITLE)	DATE & TIME		INITIALS	INITIALING ONLY VERIFIES
8 GRIEVANT PERSON OR UNION (LHM Name/Title)	ADDRESS	CITY	STATE	PHONE
9 SOCIAL SEC NO	SERVICE SENIORITY CRAFT MAINT	FTB - PTR - PTF	LEVEL 5	STEP
10 JOB & PAY LOCATION (UNIT/SEC. BR./STA/OFC) BEM P/625 MAIN	WORK LOCATION CITY AND ZIP CODE		DUTY HRS 0656 - 1500	OFF DAYS Sa Su M T W T F
LIFETIME SECURITY YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		VETERAN YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		

11 Pursuant to Article XV of the National Agreement we hereby appeal to Step 2 the following Grievance alleging a Violation of (but not limited to) the following: NATIONAL (Art./Sec.)

LOCAL MEMO (ART./SEC.) OTHER MANUALS, POLICIES, LHM MINUTES, ETC.

Art 10, 5, 15, 17, 19 24

12 DETAILED STATEMENT OF FACTS/CONTENTIONS OF THE GRIEVANT

Stewards rights violated

List of attached papers as identified

(47)

13 CORRECTIVE ACTION REQUESTED

pay hrs not in operation 616

15070





HUMAN RESOURCES
Midwest Area

**UNITED STATES
POSTAL SERVICE**

Date: *Sep 30, 1996*

Ref:

Subj: **Step 3 Decision**

To: **Mr. Don Foley, APWU
NBA, Maintenance Craft
1001 E. 101st Terrace
Kansas City, MO 64141-3368**



Decision: Denied
Date: *9-30-96*
Art. Code: *15.2000
17.3340*

Dear Mr. Foley:

Pursuant to the terms and obligations as set forth in Article 15 of the current National Agreement, Management and Union designees met at step 3 of the grievance procedure. The results of that meeting on the above referenced case are as follows:

The grievance is procedurally defective at Step 2 as it failed to state a specific violation of the contract. The union failed to provide a specific date, time, place, supervisor, or provide sufficient information for mgmt. to properly defend. Absent the specifics, mgmt. is unable to address the conditions that were in effect at the time of the alleged denial. Mgmt. regularly provide steward time and there is no evidence that mgmt. unreasonably denies appropriate steward time

Interpretive Issue

Non-Interpretive Issue

Paul A. Lyons

Step 3 Management Designee

Don Foley

Step 3 Union Designee

10/1/96
Date Received

The Union's signature only signifies date-time of receipt.



1 DISCIPLINE (NATURE OF) OR CONTRACT (ISSUE)		CRAFT	DATE	LOCAL GRIEVANCE #	USPS GRIEVANCE #						
6 UNIT/SEC/BR/STA/OFC	DATE/TIME	USPS REP - SUPR		GRIEVANT AND/OR STEWARD							
7 STEP 1 DECISION BY (NAME & TITLE)			DATE & TIME	INITIALS	INITIALING ONLY VERIFIES DATE OF DECISION						
8 GRIEVANT PERSON OR UNION (Last Name First)		ADDRESS	CITY	STATE	PHONE						
9 SOCIAL SEC. NO.	SERVICE SENIORITY CRAFT	FTR - PTR - PTF	LEVEL	STEP	DUTY HRS	OFF DAYS					
10 JOB#/PAY LOCATION (UNIT/SEC/BR/STA/OFC)		WORK LOCATION CITY AND ZIP CODE			SA	SU	M	T	W	T	F
					LIFETIME SECURITY	VETERAN					
					YES <input type="checkbox"/>	NO <input type="checkbox"/>	YES <input type="checkbox"/>	NO <input type="checkbox"/>			
11 Pursuant to Article XV of the National Agreement we hereby appeal to Step 2 the following Grievance alleging a Violation of (but not limited to) the following: NATIONAL, (Art./Sec.)											
LOCAL MEMO (ART./SEC.) OTHER MANUALS, POLICIES, L/M MINUTES, ETC.											

(a) Problem:

(b) Background:

(c) Documents:

(d) Corrective Action:

(e) Management's Response:

How To Complete The Step 2 Grievance Form

The Step 2 Grievance Form *must* be filled out carefully and completely. Each line *must* be completed:

Line 1—Nature of discipline or contract issue; the date on which the appeal is made; union local grievance number.

Line 2—Name of USPS official to whom appeal is made; name of installation; telephone number.

Line 3—Local Union's business address

Line 4—Name of APWU Representative authorized to discuss Step 2; telephone numbers where that individual may be reached.

Line 5—Name of Local Union President; telephone numbers where that individual may be reached.

Line 6—Installation where Step 1 was heard; date/time discussion took place; name of supervisor who discussed the grievance at Step 1; name of grievant and/or steward present at the discussion.

Line 7—Name of supervisor who made the decision; date/time decision was made; initials of supervisor making the decision attesting to date/time of decision.

Line 8—Grievant (or Union if class action), address and telephone number of same.

Line 9—Social Security number of employee; seniority date; service & craft; employee classification; level; step; duty hours; off days.

Line 10—Name of installation where incident occurred; zip code of installation where incident occurred; whether or not employee was hired before or after 9-15-78 (lifetime security); and whether or not employee is classified as a preference eligible (veteran).

Line 11—Cite contract article violated.

Line 12—What happened and reasons for making the appeal.

Line 13—What the Union feels is required to correct grievance.

To Whom Is The Step 2 Grievance Appealed?

The Step 2 official form, once completed and reviewed to insure accuracy, is appealed to the installation head or designee. To safeguard time limits, it is wise to use certified mail, return receipt requested.

**STEP 2
GRIEVANCE
APPEAL FORM**

AMERICAN POSTAL WORKERS UNION, AFL-CIO



1 DISCIPLINE (NATURE OF) OR CONTRACT (ISSUE)	CRAFT	DATE	LOCAL GRIEVANCE #	USPS GRIEVANCE #
2 TO USPS STEP 2 DESIGNEE (NAME & TITLE)	INSTALLATION/SEC. CEN./BMC		#	PHONE
3 FROM: LOCAL UNION (NAME OF)	ADDRESS	CITY	STATE	ZIP
4 STEP 2 AUTHORIZED UNION REP. - (NAME & TITLE)	AREA CODE	PHONE (OFFICE)	AREA CODE	PHONE (OTHER)
5 LOCAL UNION PRESIDENT	AREA CODE	PHONE (OFFICE)	AREA CODE	PHONE (OTHER)

STEP 1 MEETING & DECISION

6 UNIT/SEC/BR/STA/OFC	DATE/TIME	USPS REP - SUPR	MET WITH GRIEVANT AND/OR STEWARD							
7 STEP 1 DECISION BY (NAME & TITLE)	DATE & TIME		INITIALS	INITIALING ONLY VERIFIES DATE OF DECISION						
8 GRIEVANT PERSON OR UNION (Last Name First)	ADDRESS	CITY	STATE	PHONE						
9 SOCIAL SEC. NO.	SERVICE SENIORITY	CRAFT	FTR - PTR - PTF	LEVEL	STEP	DUTY HRS	OFF DAYS			
10 JOB#/PAY LOCATION (UNIT/SEC/BR/STA/OFC)	WORK LOCATION CITY AND ZIP CODE			SA	SU	M	T	W	T	F
				LIFETIME SECURITY	VETERAN					
				YES <input type="checkbox"/> NO <input type="checkbox"/>	YES <input type="checkbox"/> NO <input type="checkbox"/>					

11 Pursuant to Article XV of the National Agreement we hereby appeal to Step 2 the following Grievance alleging a Violation of (but not limited to) the following: NATIONAL, (Art./Sec.) LOCAL MEMO (ART./SEC.) OTHER MANUALS, POLICIES, L/M MINUTES, ETC.

12 DETAILED STATEMENT OF FACTS/CONTENTIONS OF THE GRIEVANT

st of attached papers as identified

3 CORRECTIVE ACTION REQUESTED

STEP 2 APPEAL
SUPPORTING DOCUMENTS

In this case the Union relies upon (though is not limited to) the following documents:

Copies of these documents will be supplied to management upon request and subject to payment of ten cents (10¢) per copy and four dollars-twenty five cents (\$4.25) per quarter hour for time spent by the Union in obtaining and making said copies.

AMERICAN POSTAL WORKERS UNION, AFL-CIO

1997

STEP 3 GRIEVANCE APPEAL FORM

GRIEVANT—PERSON OR UNION (FROM LINE 8)		WORK LOCATION CITY AND ZIP CODE (FROM LINE 10)		REGIONS GRIEVANCE #	
1 DISCIPLINE (NATURE OF) OR CONTRACT (ISSUE)		CRAFT	DATE OF STEP 2	LOCAL GRIEVANCE #	USPS GRIEVANCE #

THE ABOVE GRIEVANCE IS BEING APPEALED TO STEP 3/DATE _____

REGIONAL DIRECTOR OF
EMPLOYEE & LABOR RELATIONS

Any appeal from an adverse decision in Step 2 shall be in writing to the Regional Director for Employee and Labor Relations, with a copy to the Employer's Step 2 representative, and shall specify the reasons for the appeal. (Within fifteen (15) days)

The appeal is in accordance with Article 15 Grievance Arbitration Procedures Sec. 2 Step 2(h) and Step 3(a) for the following reasons:

and we have attached the Step 2 appeal grievance form, the employer's written Step 2 decision and our corrections and additions to the Step 2 decision if we submitted same to employer's Step 2 representative.

3 FROM: LOCAL UNION (NAME OF) ADDRESS CITY STATE ZIP

COPY - LOCAL FILE
COPY - USPS STEP 2 DESIGNEE

SUBMIT UNION'S REGIONAL COPY WITH FILE TO (or as instructed)

NATIONAL BUSINESS AGENT

Sincerely,

Authorized Union Rep.

American Postal Workers Union, AFL-CIO

Appeal To Arbitration From Step 2 Grievance Form

GRIEVANT - PERSON OR UNION (CLASS ACTION)	WORK LOCATION CITY, STATE AND ZIP CODE	USPS Grievance #	
DISCIPLINE (NATURE OF) OR CONTRACT (ISSUE)	CRAFT	DATE OF STEP 2	APWU Grievance #

Date: _____

TO: REGIONAL DIRECTOR OF
EMPLOYEE AND LABOR RELATIONS
GRIEVANCE/ARBITRATION PROCESSING CENTER

Please be advised that pursuant to Article 15, Section 2 Step 2(h) of the Collective Bargaining Agreement, the Union hereby is appealing the above-referenced grievance to arbitration. This appeal includes a copy of the Step 2 appeal form, the employer's written Step 2 decision and the union's corrections and additions to the Step 2 decision if submitted.

- The Postal Service refused and failed to render a written decision within ten (10) days after the Step 2 meeting and to provide the union 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.

LOCAL UNION (NAME)	ADDRESS	CITY	STATE	ZIP
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Sincerely,

Authorized Union Rep.

COPY - LOCAL FILE
COPY - USPS STEP 2 DESIGNEE
SUBMIT COPY OF CASE FILE TO APWU REGIONAL OFFICE TO:

NATIONAL BUSINESS AGENT

