

Information Requests

Presented by:

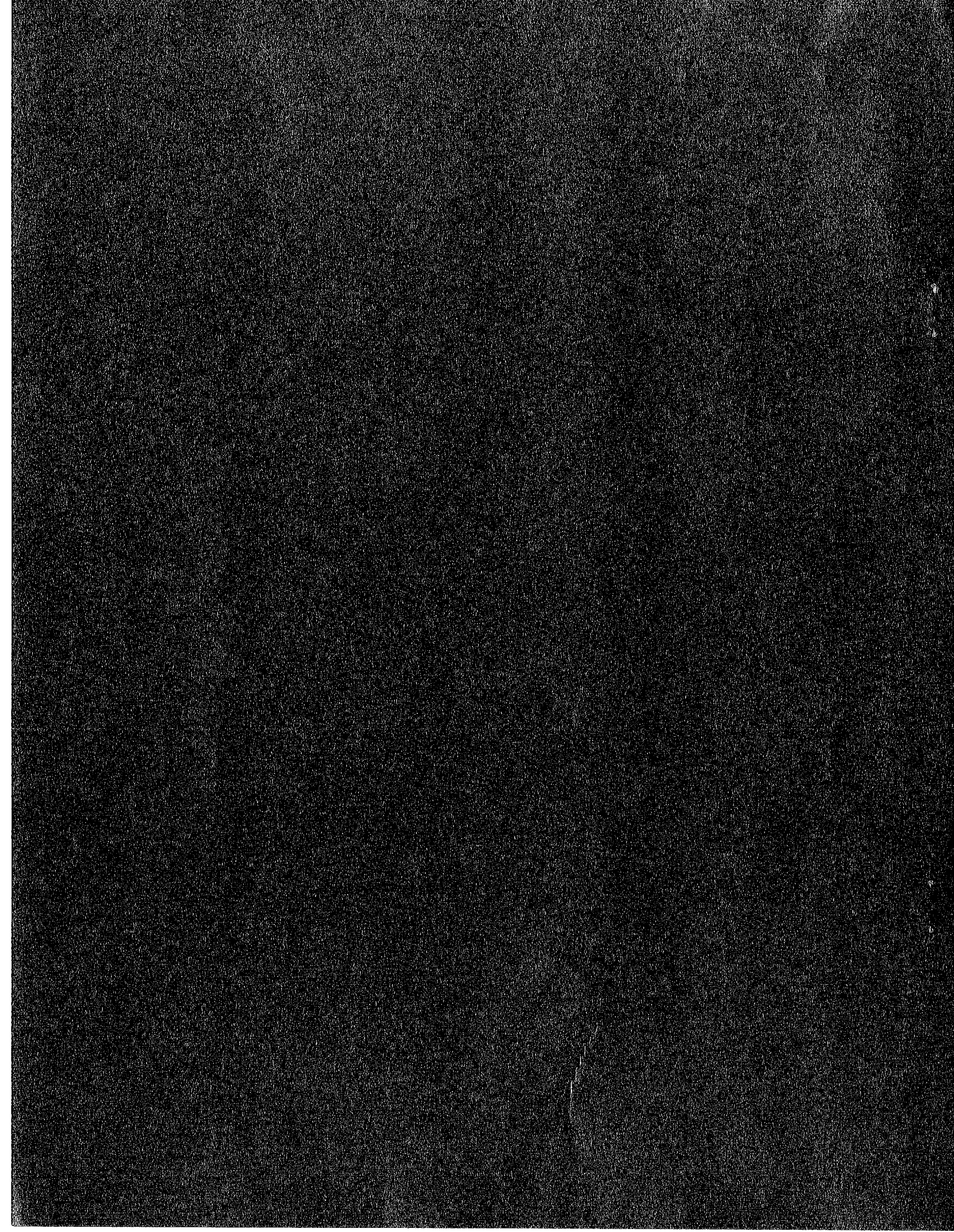
St. Louis Region National Business Agents

Robert D. Kessler

Donald L. Foley

Dennis Taff

Iowa Fall Conference
Des Moines, IA
October 2010



RIGHT TO INFORMATION

The Union's entitlement to information relevant to collective bargaining and Contract administration is set forth in Article 31.3. Article 17.3 states specific rights to review documents, files and other records, in addition to the right to interview a grievant, supervisors and witnesses.

A request for information should state how the request is relevant to the handling of a grievance or potential grievance.

Management should respond to information requests in a cooperative and timely manner.

When a relevant request is made for documentation, management should provide for the review of the requested documentation as soon as is reasonably possible.

The Union also has an obligation to provide the Postal Service with information it relies upon in a grievance (Article 15).

The Union is entitled to medical records (under the authority and control of the Postal Service) which are necessary to investigate or process a grievance, even without an employee's authorization, as provided for in Handbook AS 353, Appendix (USPS 120.090), the Health and Medical Services Handbook, (EL-808).

When the Union is provided with information (for example, medical records) it is subject to the same rules of confidentiality as the Postal Service.

Information relied on by the parties to support their positions in a grievance should be exchanged between the parties' representatives at the lowest possible level.

If the Union requests a copy of PS Form 2608 at Step 2 or any subsequent step in the grievance procedure, it will be made available.

Likewise, PS Form 2609 will be made available, upon request, at Step 3 or any time thereafter.

USE OF VIDEO TAPES

If any part of a video tape has been or is intended to be used as a basis for disciplinary action, those portions will be reproduced and afforded to the Union, upon request.

The Union is responsible for the costs associated with reproduction.

Grievant/Union

Nature of Allegation

DAVID ~~REDACTED~~

ART 16-Removal

Pg. 1

1-27-04

Date of Request

To: G. LIMANDRI

Title: SUPERVISOR

From: JOE DUNCAN

Title: STEWARD

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:

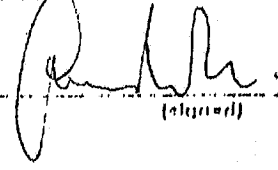
1. A COPY OF ALL EVIDENCE RELIED ON BY THE EMPLOYER IN MAKING ITS DECISION TO REMOVE DAVID ~~REDACTED~~
2. A COPY OF ALL MEDICAL DOCUMENTATION SUBMITTED BY MR. ~~REDACTED~~ FROM SEPT 2003 TILL PRESENT DATE
3. A COPY OF ALL FMLA DOCUMENTATION SUBMITTED BY MR. ~~REDACTED~~ FROM SEPT 2003 TILL PRESENT DATE

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 9a(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

1/27/04
(date)


(signature)

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Grievant/Union Allen, ██████████	Nature of Allegation 14-Day Suspension #22367
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11/10/2008
Date of Request

To: <u>Ray Huey</u>	Title: <u>Labor Relations</u>
From: <u>Robert Anson</u>	Title: <u>Steward tour 1 and 3</u>

Subject: REQUEST FOR INFORMATION & DOCUMENTS RELATIVE TO PROCESSING & 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. All records and or facts that led to the decision for Management to issue a 14-Day suspension to Sabrina ██████████ p/l 310 on 11/07/2008.
2. All 3971's for Sabrina ██████████ for the following dates: 07/26, 07/27, 07/31, 08/03, 08/06, 08/23, 08/29, 09/03, 09/24, 09/26, 09/28, 10/15, 10/23, 10/25, 10/29/2008.

RECEIVED
NOV 10 2008
LABOR RELATIONS DISTRICT
ARKANSAS


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 2 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 (GIVE REASON)

(date)

(signed)

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Grievant/Union	Nature of Allegation
	Proposed Notice Of Removal



3/9/10

Date of Request

To: Jim Maher Title: OIC
From: John Johnson Title: Steward

**Subject: REQUEST FOR INFORMATION & DOCUMENTS RELATIVE TO
PROCESSING & 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:

- E) Copy of "Request for Discipline" sent to labor relations regarding Mr. .
- F) Copies of any/all prior discipline issued to Mr.  and disposition of each.
- G) Review & Concurring authority's notes/records of investigation & what specific investigation was done by the Review & Concurring authority.
- H) Copy of Supervisor's notes/records of investigation.

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 2 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 (GIVE REASON)

(date)

(signed)

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Grievant/Union	Nature of Allegation
██████	Proposed Notice Of Removal

3/9/10

Date of Request

To: Jim Maher Title: OIC
From: John Johnson Title: Steward

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

- A) Copy of 3972 for Kenny ██████ for the years of 2009 and 2010.
- B) Copy of Employee Everything Report from TACS for Kenny ██████ on 6/13/09, 7/1/09, 7/2/09, 7/8/09, 7/24/09, 8/1/09, 8/29/09, 12/18/09, 12/19/09, 12/22/09 and 12/23/09.
- C) Copies of all 3971s for all dates referred to in (B) above.
- D) Everything relied upon in determining Mr. ██████'s proposed removal.

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 2 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 (GIVE REASON)

(date)

(signed)

Exhibit #4

RFI Tracking # 09-070

Received by: RD
Date 8/14/09 Time 1241

American Postal Workers Union

(Affiliated with the A. F. of L. - C. I. O.)

Grievant/Union Weber/Ridenour	Nature of Allegation Art #16	Grievance Number 09-122
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Office: Richard G Wilson P&DF

8/13/09
Date of Request

To: Robert Fleming Title: Postmaster
 From: Clark J Ridenour Title: CCD
 Subject: **REQUEST FOR INFORMATION AND 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. Copy of all documentation (notes, emails, letters) concerning LOW issued to Charlene Weber
2. Date of Job discussion referencing Ms Webers past failures to properly scan express mail pieces. N/A NO previous discussion
- ✓ 3. Copy of Schedule for week of July 25, 2009
- ✓ 4. Copy of TAC500R3 for each employee (Clerk) scheduled to work or was N/S for July 25, 2009 (Function 4)
5. Copy of TAC500R3 for each employee (Clerk) who worked MPO who is a Function 1 (Plant) Employee July 25th? No info available
- ✓ 6. Training record establishing Ms Weber has been Trained in the proper way to scan express mails Provided Postage

This information will be received on/or before: 8/18/09
Date

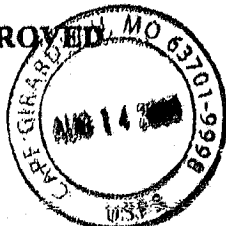
NOTE: Article 17, Section 3 requires the employer to provide for review all documents, files, and other records necessary in processing a grievance. Article 31, Section 3 requires that the Employer make available for inspection by the Unions all relevant information necessary for collective bargaining 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

8/14/09



Signed

[Handwritten Signature]

REQUIRED GRIEVANCE DOCUMENTATION

The following documentation must be included when filing these types of grievances:

DISCIPLINE

- *Discipline Notice
- *Prior Discipline Notices (Clear As Fact Element)
- *Did Grievant Receive Discipline? Not, Make Notation-If So, Give Date of Discussion
- *Did Supervisor Inform Grievant of Intent To Institute Discipline? Not, Make Notation-If So, Give Date Incident in Grievant's Statement)
- *Grievant's Statement
- *Witness Statement, If Any
- *Inspector's Investigative Memorandum
- *Supervisor's Interview
- *Evidence of Highest Level Consentment
- *Leave Slip, All Related Evidence/Records, Etc.

OVERTIME

- *Overtime Desired (tick)
- *Names of Employees Who Worked
- *Names of Employees Who Should Have Worked
- *Grievant's Statement
- *Steward's Statement/Comment
- *Number of Hours/Day Involved
- *Clock Register, Etc., Reports of Employees Involved
- *Overtime Dollars Performed

HOLIDAY SCHEDULE

- *Holiday Schedule
- *Seniority List(s)
- *Names of Employees Who Worked
- *Names of Employees Who Should Have Worked
- *Grievant's Statement
- *Steward's Statement

ATTENDANCE

- *Form 3971 (Leave Slip)
- *Form 3972 (Leave Analysis) For Prior 2 Years
- *Form 3956 (Medical Unit Slip), If Applicable
- *Medical Evidence
- *Prior Discipline, If Any
- *Discussion Date, If Any
- *Grievant's Statement
- *Steward's Statement

A.W.O.L.

- *Form 3971 (Leave Slip)
- *Medical/Emergency Evidence
- *Grievant's Statement
- *Witness Statement, If Any
- *Steward's Statement

MEDICAL EVIDENCE (REIMBURSEMENT)

- *Medical Evidence
- *Bill, Receipt or Canceled Check
- *Grievant's Statement
- *Steward's Statement

MEDICAL LEAVE

- *Form 3971 of Grievant(s)
- *Form 3971 of Employer With Approved Leave
- *Leave Book
- *LWOP Leave Provisions
- *Grievant's & Steward's Statements

SLEEP INCREASE

- *Notice of Withholding Sleep Increase
- *Date Employee Received Notice
- *3972 Form (Leave Analysis) If Grievant Has Attendance Related Discipline
- *Discipline Record
- *Grievant's & Steward's Statements

SAFETY & HEALTH

- *PS Form 1767
- *Any Other Pertinent Form And/Or Related To Safety Violations

LETTER OF DEMAND

- *Letter of Demand Notice
- *Forms 3368, 3369 & 3294
- *Forms 1412 For Audit Period
- *Money Order, If Applicable
- *Declaratory
- *Grievant's & Steward's Statements
- *Forms 17 For Audit Period
- *Security Violation Report

JOB BID

- *Bid Card
- *Job Posting Notice
- *Successful Bidders Notice
- *Award Letter And/Or Date Notified By Postal
- *Grievant's & Steward's Statements

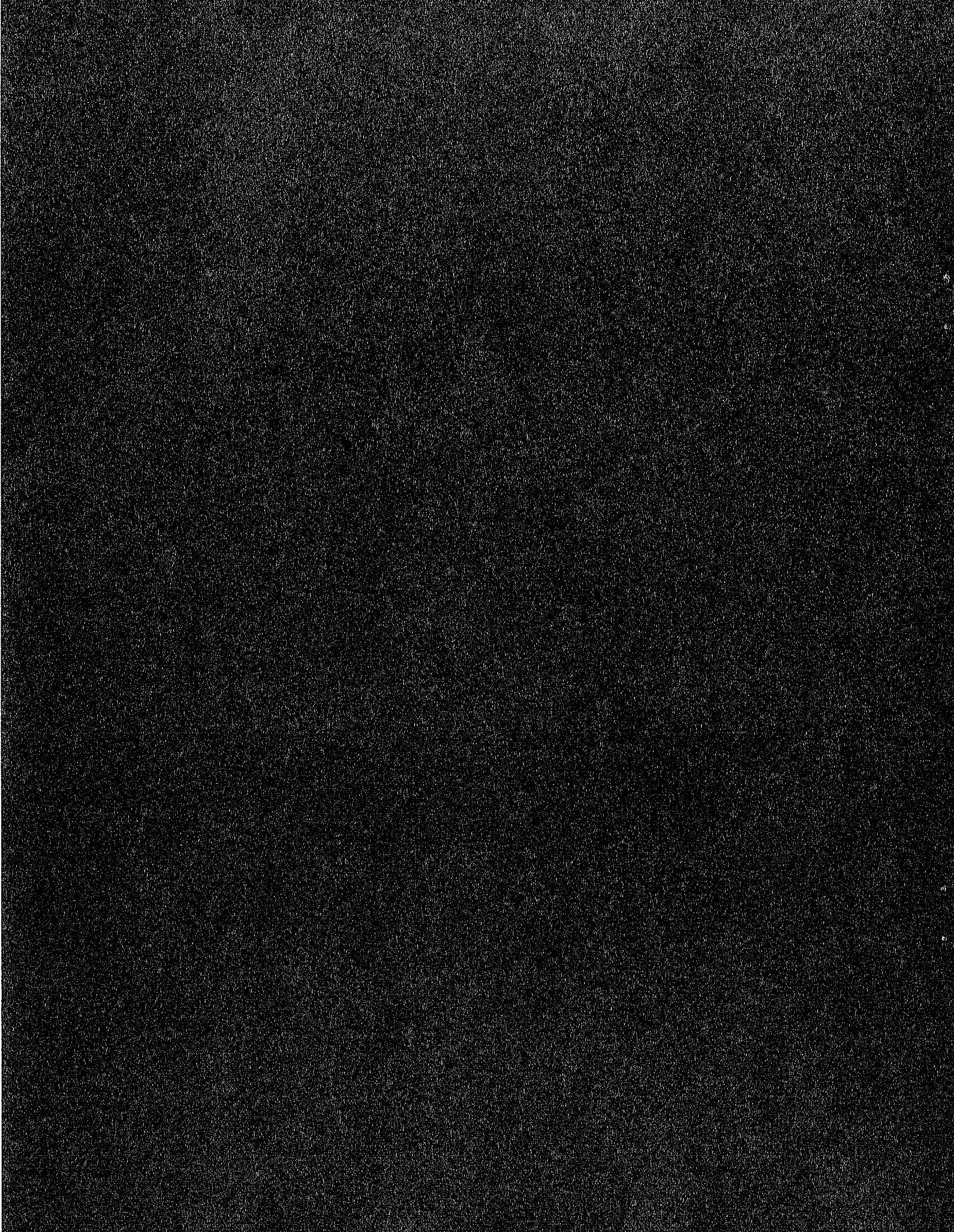
BARGAINING UNIT WORK

- *Statements From Employee(s) Witnessing Supervisor Working
- *Length of Time Supervisor Worked
- *Date at Location
- *Type of Work Performed
- *Use Union "Bargaining Unit Work" Form

LIGHT DUTY

- *Grievant's Letter Requesting Light Duty
- *Management's Letter Denying Light Duty
- *Grievant's Medical Evidence of Restrictions Within Past Year
- *Names/Evidence of Employees Granted Light Duty During Past Year
- *Evidence of Work Available Within Grievant's Restrictions
- *Grievant's & Steward's Statements
- *LWOP Light Duty Provisions

Attaching & Listing Documentation



Step 2 Grievance Appeal Form 08-76
List of attached papers as identified

Appeal to Arbitration
Additions and Corrections
EL-921 1 page
ELM 513.34
4-22-08 statement from M Berninghaus
Step 2 information sheet from management
Step 2 Decision Letter from management
Step 2 Grievance Appeal Form 5 pages
Step 1 Grievance outline worksheet/PS 2608 attached
e-mail from Tim Stupka
Interview Tim Stupka given by Steward Albrecht
Union's Step 1 grievance Outline Worksheet 3-pages
PS 3972 given to Steward Albrecht & grievant
Grievant's appointment card for EAP
Letter of Warning
RFI's
PS 3972's of other employees in the Fort Dodge office
DAP 3-pages
Grievant's PS 3971's
Marion Anderson's clock rings and PS 3971's
Loaners scheduled to work in the Fort Dodge office
FMLA request
Grievant's 2nd Dr.
Letter to Paula Gilliland from Grievant

Unsolicited Certification
Letter from the USPS regarding FMLA
Denied FMLA request
Letter to Paula Gilliland from Local President Tom
Doyle 2 pages
Q & A on FMLA

Letter from Tom Harkin to Postmaster General
Grievance 08-13 5-pages
Attachment to 08-14
EL-921 1 page
ELM 513.34



Exhibit List
Investigative Documents

Grievance # 08-153

- Exhibit # 1 Moving Papers
- Exhibit # 2 Letter of Warning
- Exhibit # 3 Predisciplinary Interview
- Exhibit # 4 Grievant's statement
- Exhibit # 5 Email to Wayne Robinson, forwarded from Sharon King-Serocki
Statement from OIG agent explaining that this situation is
administrative, then going on to offer damaging,
unfounded opinions.
- Exhibit # 6 TVB request to Brian Esser and answer provided. Shows that
management's accusations and actions toward grievant
are baseless.
- Exhibit # 7 Grievant's documentation provided as instructed.
- Exhibit # 8 3971 submitted by grievant. 3971 generated from computer
- Exhibit # 9 JCIM - Article 10. Explains an employee's right for emergency
annual.
- Exhibit # 10 ELM 510 - Employee's responsibility to create a 3971
for an absence.

INVESTIGATIVE DOCUMENTS

GRIEVANCE # 08-21597

- EXHIBIT # 1, COVER SHEET
- EXHIBIT # 2, DAP - DISCIPLINARY ACTION PROPOSAL - LETTER
- EXHIBIT # _____, OF WARNING
- EXHIBIT # 3, LETTER OF WARNING - ISSUED JUNE 30, 2008
- EXHIBIT # _____, SIGNED JULY 5, 2008
- EXHIBIT # 4, COPY OF NOTICE OF ABSENCE INQUIRY
- EXHIBIT # 5, COPY OF 2007 AND 2008 3972'S
- EXHIBIT # 6, COPY OF DOCTOR NOTES FROM DECEMBER
- EXHIBIT # _____, 2007 TO JUNE 2008
- EXHIBIT # 7, COPY OF DOCTOR NOTE FOR SCHEDULED
- EXHIBIT # _____, SICK LEAVE STARTING MARCH 20, 2008
- EXHIBIT # 8, COPY OF DOCTOR NOTE FOR RETURN TO
- EXHIBIT # _____, WORK ON MAY 27, 2008
- EXHIBIT # 9, COPY OF 3971 FOR REQUESTED SICK LEAVE
- EXHIBIT # _____, SIGNED ON MARCH 20, 2008 BY MDD
- EXHIBIT # _____, GENTRY GRANDBERG
- EXHIBIT # 10, 3971'S FROM DECEMBER 2007 TO JUNE
- EXHIBIT # _____, 2008 - UNSCHEDULED AND AWDL
- EXHIBIT # _____, _____

INVESTIGATIVE DOCUMENTS

GRIEVANCE # 08-21597

- EXHIBIT # 11, EMPLOYEE EVERYTHING REPORT FROM PP7
- EXHIBIT # _____, WK 2 2008 TO PP 12 WK 1 2008 SHOWING
- EXHIBIT # _____, FULL-DAY LWOP - IN LIEU OF SICK LEAVE
- EXHIBIT # 12, COPY OF STEP 2 GRIEVANCE DATED APRIL
- EXHIBIT # _____, 16, 1987 ON SCHEDULED SICK LEAVE
- EXHIBIT # 13, COPY OF STEP 2 GRIEVANCE DATED JUNE
- EXHIBIT # _____, 26, 1987 ON SCHEDULED SICK LEAVE.
- EXHIBIT # 14, LAMPS SETTLEMENT - SCHEDULED SICK
- EXHIBIT # _____, LEAVE
- EXHIBIT # 15, COPY OF LETTER FROM BARBARA YER STEEGH
- EXHIBIT # _____, ON ARBITRATION HELD ON SEPTEMBER 6, 1996
- EXHIBIT # 16, COPY OF PRIOR DISCIPLINE - AND SETTLEMENT
- EXHIBIT # 17, COPY OF REQUEST FOR INFORMATION DATED
- EXHIBIT # _____, JUNE 22, 2008 - DENIED
- EXHIBIT # 18, COPY OF REQUEST FOR INFORMATION DATED
- EXHIBIT # _____, JUNE 19, 2008 - MEDICAL REQUEST FROM
- EXHIBIT # _____, DAWN BAPER.
- EXHIBIT # _____, _____
- EXHIBIT # _____, _____

GRIEVANCE EXHIBIT CHECK LIST

Local Grievance# 09-126 Step# 2 Pg 1

Grievant / Steward Weber/Ridenour Art # 16 LOW

EXHIBIT # 1a,b: Copy of LOW issued to Charlene Weber dated August 7, 2009

PURPOSE Demonstrates the charges brought against Ms Weber

EXHIBIT # 2: Copy of PDI worksheet dated 8/6/09 for Ms Weber

PURPOSE Establishes the dates and information of the PDI recorded by ASDO
Jeanne Wilson

EXHIBIT # 3: Copy of DAP dated 8/6/09 submitted by ASDO Jeanne Wilson

PURPOSE Establishes the pertinent information for the requested Disciplinary
Action submitted by ASDO Jeanne Wilson

EXHIBIT # 4: Copy of RFI submitted by the Steward of record dated 8/13/09

PURPOSE Demonstrates that information supplied by Postmaster Robert Fleming
indicates NO job discussion was performed as well as NO training record supplied

EXHIBIT # 5: Copy of Express Mail receipt for express at issue

PURPOSE Illustrates Ms Weber believed her scan did stop the clock as required

EXHIBIT # 6: Copy of Track/Confirm report for express piece in question

PURPOSE Establishes the dates and times of the scans involved with this express
Mail Piece

EXHIBIT # 7: Copy of Chart describing proper scanning of express Mail

PURPOSE Establishes the proper event codes for scanning express mail pieces

EXHIBIT # 8: Copy of schedule for the day in question at the MPO

PURPOSE Establishes the number of employees at the MPO on the day in question

EXHIBIT # 9a,b: Copy of Ms Weber's Job Description for current job

PURPOSE Establishes Ms Weber's Principle Assignment area and lack of Express
mail as a duty

EXHIBIT # 10a,b: Copy of Catrina Dawson's Job Description for job on day in question

PURPOSE Establishes that Express Mail is listed as a duty for this job also Ms Dawson
was present on day in question

GRIEVANCE EXHIBIT CHECK LIST

Local Grievance# 09-126 Step# 2 Pg 2

Grievant / Steward Weber/Ridenour Art # 16 LOW

EXHIBIT # 11: Excerpt from EL-921 Section III.B

PURPOSE Describes disciplinary procedures as MUST BE PROGRESSIVE AND
CORRECTIVE

EXHIBIT # 12: Excerpt from National Agreement Art #16.2

PURPOSE Describes Managements responsibility to perform JOB DISCUSSIONS
with employees as first step in discipline

EXHIBIT # 13: Excerpt from EL-921 Section III.C

PURPOSE Establishes Just Cause tests of IS THE RULE CONSISTENTLY AND
EQUITIABLY ENFORCED and WAS A THOROUGH INVESTIGATION COMPLETED

EXHIBIT # 14: Copy of Express mail receipt for piece accepted on 7/22/09

PURPOSE Demonstrates Express mail piece that was left at Plant for 9 days and
no action at all was taken

EXHIBIT # 15: Copy of Track/Confirm report for Express mail piece accepted 7/22/09

PURPOSE Demonstrates the dates the express mail piece was scanned at the
Richard G Wilson P&DE

EXHIBIT # 16: Copy of MAQ report for 7/15/09

PURPOSE Establishes second Express mail issue at plant

EXHIBIT # 17: Copy of MOR from Steward Mark Pobst dated 7/16/09

PURPOSE Describes events of PDI into Express Mail issue for piece dated 7/15/09

EXHIBIT # 18: Copy of Step 1 worksheet for instant grievance

PURPOSE Establishes the dates and lack of Meeting at Step 1 for the instant
grievance

EXHIBIT # 19: Copy of Email sent by Steward of Record Ridenour to ASDO Wilson

PURPOSE Establishes ASDO Jeanne Wilson was given ample prior notice of
grievance submission date.

EXHIBIT # 20: Excerpt from National Agreement Art #15.2 Step 1 (c)

PURPOSE Establishes the time requirements for grievances

VII. FINDINGS AND DECISION

A. EVIDENTIARY ISSUES

Management interposed objections on grounds of new evidence/argument to testimony and exhibits proffered by the Union. Specifically, Management objected to Union exhibits 1, 2, 3, 4, 5, 9, and 10 as new evidence and/or new argument.¹ On the same grounds, Management also objected to all or portions of the testimony of almost every Union witness. The Union did not interpose any objections regarding testimony or exhibits proffered by Management.

It is well established that a party cannot change the thrust of the grievance at the arbitration hearing from what it was during the grievance-arbitration process. *USPS and APWU*, Case No. H4C-NA-C 30 (Mittenthal, Jan. 29, 1990). The principle was explained by National Arbitrator Aaron as follows:

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.

USPS and NALC, Case No. NC-E011359 (Aaron, Jan. 25, 1984). However, Arbitrator Aaron went on to hold that the rule barring new evidence or argument should not be given an excessively technical construction:

The spirit of the rule, however, should not be diminished by excessively technical construction. The evidence establishes to my satisfaction that Slavick and the other carriers at the Johnstown Post Office were aware from the outset of the reason for Balch's assignment to a fixed nonwork day, contrary to the terms of the MOU. NALC is therefore in no position to claim surprise during the arbitration hearing. Accordingly, I conclude that on this point NALC's objections must be overruled.

¹ The Arbitrator notes that Management has apparently withdrawn objections to Union exhibits 6, 7, and 8. Management interposed new evidence objections to these exhibits at the hearings. However, in its post-hearing brief, Management did not include Union exhibits 6, 7, and 8 among those that it was maintaining objections. As such, the Arbitrator finds that Management has withdrawn its new evidence objections to Union Exhibits 6, 7, and 8.

Here, the Arbitrator reserved on the identified objections to afford the Union the opportunity to develop the record on the new evidence/argument objections. On several occasions during the hearing, the Arbitrator explained that the Union needed to establish either that the exhibits and/or testimony was exchanged during the grievance process, or, if not, how the evidence fit within the Aaron exception to the Article 15.2 (Step 2)(d) evidence exchange requirement. The Arbitrator reviewed the essential holding of Aaron that permitted the introduction of new evidence where the developed evidence establishes that the parties were aware throughout the grievance process of the issue being addressed by the new documents being introduced such that the opposing party is in no position to claim prejudice due to surprise.

Here, for the following reasons, the Arbitrator sustains Management's new evidence objections to Union Exhibits 1, 3, 4, 5, 9, and 10. The Arbitrator excludes those identified exhibits from the record as well as any testimony regarding those exhibits. The Arbitrator overrules Management's objection to Union Exhibit 2.

It is uncontested that the Union did not provide Management with Union Exhibits 1, 3, 4, 5, 9, and 10 on or before Step 3 as required by the most generous reading of Article 15. Nor did the Union offer an excuse justifying any delay in providing Management with the disputed exhibits. The Union, the Arbitrator finds, failed to establish that the disputed exhibits fit within the Aaron exception to Article 15. The record on this point was simply left fallow. Rather, the Union argued that the exhibits were relevant to the issue at hand and that management would not be prejudiced by their introduction because the exhibits were management documents that have been in management's possession throughout the processing of the underlying grievances. The Union argued that the exhibits should not be excluded based on an overly technical construction of Article 15. The Arbitrator disagrees.

By its terms, Article 15.2 (Step 2)(d) of the National Agreement requires the parties to exchange evidence by Step 2. Arguably, additional evidence may be submitted by the Union after Step 2 as part of additions and corrections. Article 15.2 (Step 2) (g). Similarly, National Agreement suggests that the parties may submit additional evidence at Step 3 as part of the duty to ensure that "all relevant facts and contentions have been developed and considered." (Article 15.2 (Step 3) (b). Article 15

does not, however, provide an exception that would allow the submission of new evidence at hearing simply because one of the parties deems it relevant. Nor are documents maintained by Management excepted from the affirmative disclosure requirements of Article 15.

The limited exception to the document disclosure requirements of Article 15 recognized by Arbitration Aaron does not embrace the disputed Union exhibits. The mere fact that the evidence is relevant or that it has been in the possession of Management is not controlling on admissibility. Rather, the limited Aaron exception to the disclosure requirements of Article 15 permits the introduction of new evidence where it is established that the subject of the new evidence was well known to all parties throughout the grievance process such that the party opposing admission could not credibly claim surprise. That standard is not met simply because a party has espoused a generalized theory of their case during the grievance process. As stated earlier, the Union failed to lay the proper Aaron foundation for admission of the disputed exhibits. Indeed, the Union's unique interpretation of Aaron would create an exception that effectively swallowed the general Article 15 disclosure rule.

In the majority of cases, the Postal Service both creates and maintains the records that form the nucleus of most, if not all, of the proffered documents. Allowing either management or the union to hold back evidence until the hearing because management maintains that evidence somewhere would quickly devolve into arbitration by ambush. Article 15 is designed to avoid arbitration by ambush by both parties. The Union has not provided any evidence to support its non-disclosure position. For the reasons set forth above, the Arbitrator rejects the Union's non-disclosure justifications and excludes the disputed evidence.

The Arbitrator overrules Management's new evidence objection to Union Exhibit 2. The exhibit is a one-page information request submitted on September 27, 1997, by the Ms. Brown, a steward of record, to management Step 2 Designee Bruce Sanders. Management's chief objection was that the document was not included in Management's file of this grievance. There was, however, little dispute that the Union made the information request. Ms. Brown testified that she submitted the request to Mr. Sanders. In his testimony, Mr. Sanders did not dispute that he received Union Exhibit 2. The

Arbitrator finds that the document was, in fact, exchanged between the parties during the course of the grievance process and that the Service would not be surprised or prejudiced by the documents introduction.

B. THE FACTS

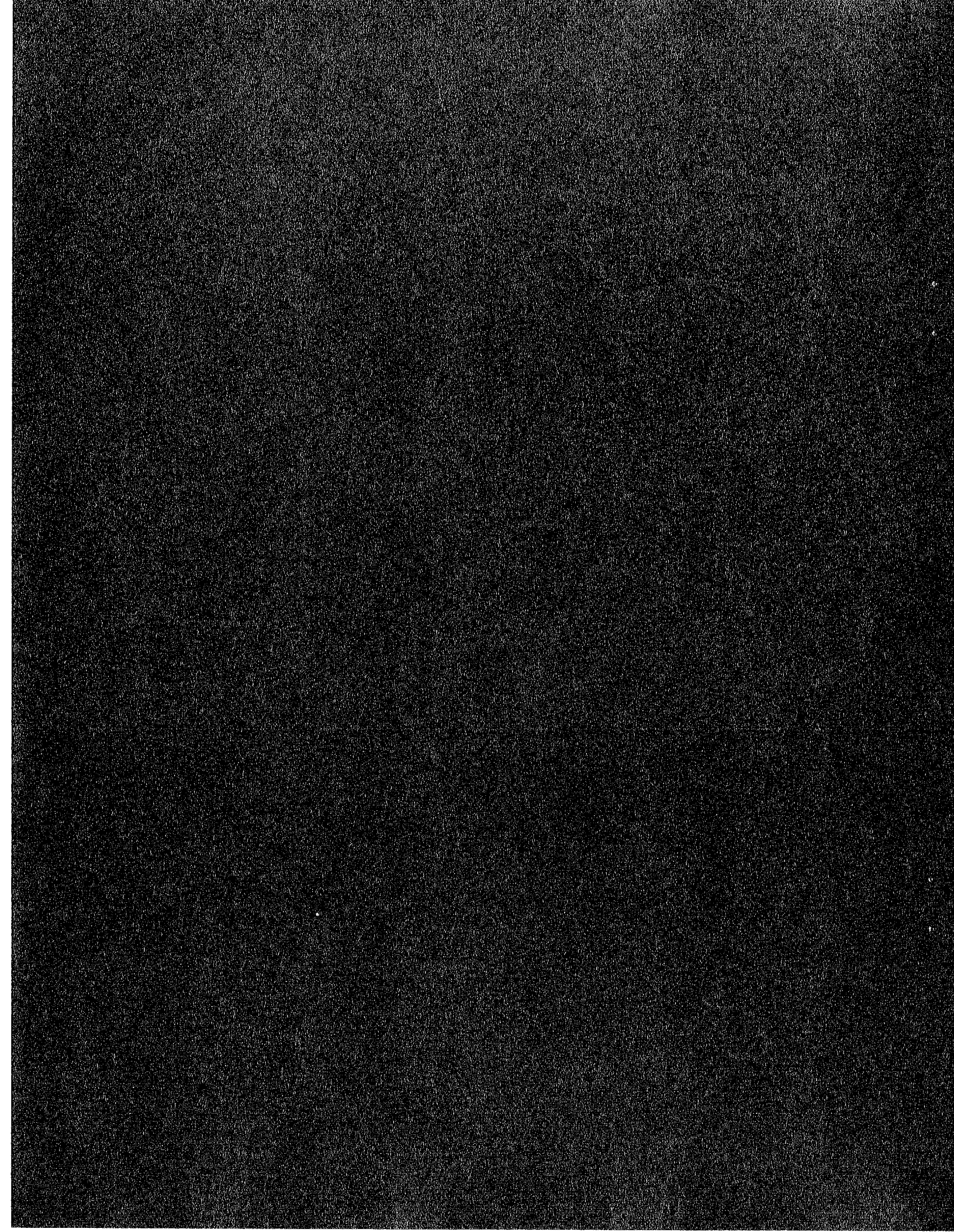
The weight of the record evidence indicates:

The facts of the case are largely not in dispute. In August 1997, employees of the United Parcel Service (UPS) went on strike for approximately two weeks. The dates of the strike are disputed. The Union alleges that the strike lasted from approximately August 1 through 20, 1997. Management alleges that the strike began at midnight on August 3 and concluded on August 19, 1997. As a result of the UPS strike, the Postal Service experienced a significant increase in priority and package mail, particularly at the Kansas City AMC. To address the spike in priority and package mail, the Postal Service solicited volunteers from branches, stations, and associate offices in the Kansas City, Missouri Metropolitan Area to work overtime at the Kansas City AMC. This offer was not, however extended to clerks on the overtime desired list at the Kansas City GPO. Clerks at stations, branches and associate offices answered the call and worked voluntary overtime at the Kansas City AMC during the UPS strike. The exact number of clerks who worked this voluntary overtime is in dispute. Management contended that only 2 to 3 clerks actually showed up and worked the voluntary overtime. The Union provided information suggesting that between 8 to 10 or 53 employees worked voluntary overtime at the Kansas City AMC during the UPS strike. On August 15, 1997, the Postal Service opened a UPS Strike Annex several miles from the Kansas City AMC.

C. THE MERITS

As a contractual case, the Union bears the burden of proving that Management violated the National Agreement. *USPS and NPMHU (North Houston CNTR)*, Case No. G98M-1G-C 00098264 (Armendariz, March 9, 2002). As set forth more fully below, the Arbitrator denies grievance E94C-1E-C 98011208 and sustains grievance 194C-1K-C 98011191.

The Golden Rule
For
Documenting
Grievances



GOLDEN RULE FOR DOCUMENTING GRIEVANCES

Article 15.2 Step Two (c) of the CBA mandates that the Union fully develop their arguments by Step Two of the grievance procedure.

Opening up a file, and inserting a document, whether it is a witness statement or clock rings, does **NOT** fulfill the requirement of fully developing the position of the union's arguments.

If management signs off at step two that they received the document that does not relieve the Union from the responsibility of making the WRITTEN argument either in the step two appeal, or in the additions and corrections after the step two appeal.

An easy way to remember this concept is:

**A DOCUMENT SUPPORTS AN ARGUMENT,
IT DOES NOT MAKE AN ARGUMENT**

For example:

An employee is accused of leaving his work area without permission and is issued a Letter of Warning. After the letter of warning was issued, another supervisor gives the union a statement that read:

"I instructed the grievant, on that day to leave his/her area to retrieve some mail. She should not be issued a LOW since she was following my instructions." Signed *Supervisor Smith*, date

The steward takes the signed and dated statement from the supervisor and includes it in the grievance file.

But the steward fails to "argue" that the statement is included and what it means. If management wanted to, they could argue at arbitration that the union never presented their full arguments until the day of arbitration and that it should be considered new evidence.

The statement must be included, but under the "position of the union" the steward must argue in his/her step two written appeal that:

"The LOW is not for just cause. Management has failed to prove that the grievant is guilty of the charge. Management charged the grievant with leaving his/her work area without permission; when in fact, another supervisor instructed the grievant to retrieve mail for the machine. (See Supervisor Smith's statement listed as Union Exhibit A)

Although this demonstration is an extreme example, the fact remains that if the union does not make a written argument, it can be considered as new evidence if the case is sent to arbitration. Management could argue that simply because a document is exchanged at step two by both parties, it does not mean that the USPS determined it to be relevant simply because they accepted the document.

More common, a steward will open the file and add clock rings but never argue just what these clock rings demonstrate.

For Example: The clock rings demonstrate a volunteer worked overtime outside of their section and a volunteer in the section was available and not used for overtime. The clock rings that demonstrate this should be referred to and specifically argued in writing.

Make sure you explain everything the document demonstrates. For example: Explain the relevance of opn #030. If that is the grievant's section, you need to include a copy of the LMOU to explain sections. An explanation as to the reason for including the LMOU will also be needed in the written argument.

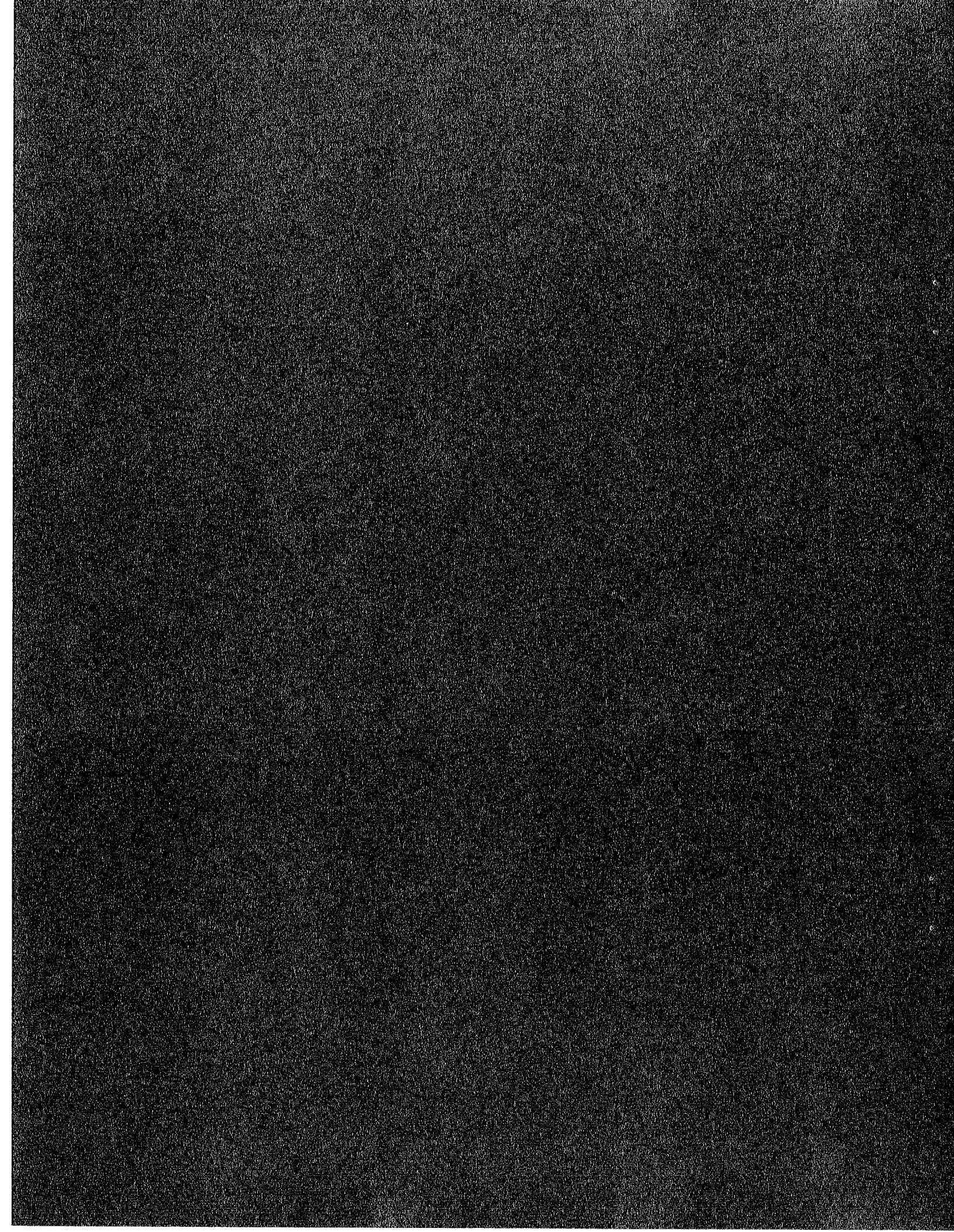
Step 2 Grievance #09-126
Ref: Charlene Weber, Art #16 L.O.W.

On or about July 25, 2009 Ms Charlene Weber working at the MPO in Cape Girardeau Mo scanned an Express as "Arrival at Unit" at approx 0839 hrs (Exhibit #6). Management has charged Ms Weber with "Failure to Follow Instructions" in a Letter of Warning (Exhibit #1a,b) dated August 7, 2009. There are a number of procedural deficiencies associated with this grievance which could be considered fatal to the grievance.

- In the body of the LOW ASDO Jeanne Wilson asserts Ms Weber should have scanned the express as "Arrived at Delivery Point" which is not even an option offered on the chart of PROPER SCANNING OF EXPRESS MAIL FOR TIMELY DELIVERY chart (Exhibit #7). Also it should be noted that ASDO Jeanne Wilson entered in the "What did the employee do" block on the Disciplinary Action Proposal (Exhibit #3) that Ms Weber "Failed to scan express mail as "Arrived at Pick-up Point." In point of fact that would have been the correct scan would have been Event code 14 "Arrival at Pick-up point" when the item in question was placed in the Box Section. Apparently ASDO Jeanne Wilson is confused as to what the correct scan is to instruct Ms Weber, so how can she charge Ms Weber with Failure to Follow Instructions?
- Ms Weber has stated that she has had no official training on the correct procedure for scanning Express Mail Pieces. An Request for Information (RFI) was submitted (Exhibit #4) requesting "Training record establishing Ms Weber has been trained in the proper way to scan Express Mails." The response from Postmaster Robert Fleming was "Provided Posting" which is a copy of Ms Weber's Job Description (Exhibit #9a,b). As can be seen Ms Weber's Principal Assignment Area is "Postage Due & Business Reply Mail Accounts" and Express Mail is not mentioned anywhere on the exhibit.



**Denial
of
Information**





ISSUE: DENIAL OF INFORMATION



THE DEFINITION

Management denies information to the Union necessary for determination as to whether or not a violation exists or for grievance investigation/processing.



THE ARGUMENT

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

Under the Collective Bargaining Agreement, the Union has contractual rights to all relevant evidence including witnesses 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.

Example: Management denies the Union access to the attendance records of the issuing 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 to the grievant. The act of withholding 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, Collective Bargaining Agreement reliance, and defenses 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 possibility of lowest possible step resolution of a grievance.

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

3. Defenses Denied Development

Articles 15, 17, and 31 all provide the Union the ability to fully develop all the facts through evidence gathering to ensure every available argument and defense is set forth on behalf of the grievant. When management denies the Union access to relevant information, it prevents the Union from formulating and ultimately providing the best possible defense. Such denial violates the basic due process right of the Union to defend an employee against discipline and an employee's basic due process right to the best possible defense.

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 step for possible resolution is forever gone 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 receipt of the information to which we were originally denied access. Such a remand will negate our due process argument for denial of information.

Depending upon the case, a remand may be considered if it is coupled with an agreement to make the employee whole for the period through the remand date if loss to the employee has occurred. Such an agreement would have to be weighed versus the value of the due process argument and the harm the loss has had to the grievant.

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.

WHEN INFORMATION IS DENIED

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 – regarding the information denial.

In that grievance, request as a remedy:

- (1) The information be provided so long as such access is given prior to any grievance step meetings and,
- (2) Should the information not be provided – no later than at the Step 2 meeting - that the original grievance's corrective remedy be sustained in its entirety.

Although it can be argued an additional 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) 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 to the original Request for Information. It is also recommended that a RFI be sent to the supervisor's boss – with the other requests attached – if the superior does not ensure compliance. Involving more managers is beneficial – RFI "maximization." In this way, we can point out to the Arbitrator we were making every effort including affording a higher level manager the opportunity to rectify the lower level supervisor's failure.

3. Include the Denial of Information Reference in the Disciplinary 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.

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 defense than would be the information had it been obtained.



THE COLLECTIVE BARGAINING AGREEMENT

Articles 15, 17, and 31 are the Collective Bargaining Agreement authority which clearly requires management to provide the relevant and necessary information for grievance processing and violation determination:

ARTICLE 15 GRIEVANCE ARBITRATION PROCEDURE

“Section 2 Grievance Procedure Steps

Step 2:

(d) 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.”

ARTICLE 17 REPRESENTATION

“Section 3. Rights of Stewards

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 UNION-MANAGEMENT COOPERATION

"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. Upon the request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information."

JOINT CONTRACT INTERPRETATION MANUAL – RIGHT TO INFORMATION

The union's entitlement to information relevant to collective bargaining and contract administration is set forth in Article 31.3. Article 17.3 states specific rights to review documents, files and other records, in addition to the right to interview a grievant, supervisors and witnesses. A request for information should state how the request is relevant to the handling of a grievance or potential grievance.

Management should respond to information requests in a cooperative and timely manner. When a relevant request is made for documentation, management should provide for the review of the requested documentation as soon as is reasonably possible.

Information relied on by the parties to support their positions in a grievance should be exchanged between the parties' representatives at the lowest possible level.



THE INTERVIEW

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 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 its defense of the denial. The interview also ensures management is prevented from presenting some innovative excuse for the denial at arbitration. We not only want proof of denial for our Step 2 appeal, but we want to cement management's reasons for denial. This will greatly enhance our pursuit of this due process violation.



THE ARBITRATORS

Arbitrators have provided excellent language on the issues related to denial of information and, in some cases, overturned disciplinary actions in their entirety solely on that basis:

Arbitrator Carl F. Stoltenberg
Philadelphia, Pennsylvania

October 4, 1988

Case No. E4T-2A-D 38983/38986
Pages 13-16

"The Agreement provides, at Article 31, Section 3, that the Postal Service will make available for inspection all relevant information necessary for determining whether to file or to continue to process a grievance. The same provision also indicates that the Postal Service will provide all relevant information necessary for the enforcement of the Agreement. The same basic rights are afforded Union Stewards in Article 17, Section 3 of the Agreement. During the course of the arbitration hearing the Union raised a continuing objection to certain exhibits offered by the Postal Service. In fact, the Union had not seen much of this information prior to the hearing. In light of the Union's repeated requests for this exact information, the Postal Service's failure to make this information available provides grounds for sustaining this grievance solely on procedural grounds.

***The Union simply was not given access to information during the processing of the grievance to allow it to prepare and evaluate its case. The Postal Service had access to the requested information and has not presented a convincing reason for withholding the information from the Union. Since the information had been re-

quested by the Union well prior to the instant hearing, the Postal Service's failure or refusal to comply with the request acts as a bar to continuing the hearing. The information was withheld despite repeated requests. Forcing the Union to now go back and prepare its defense so long after the disciplinary action was taken and the request for information was made, would be improper. For all these reasons, the Grievant is to be returned to employment with full back pay to the time of his placement on emergency off-duty status through his period of removal. The procedural defects established on the record prevent a ruling on the merits of this case since the Grievant has been denied due process."

Arbitrator Josef P. Sirefman
Paterson, New Jersey

March 18, 1994

Case No. N7C-1N-D 0027177
Pages 11-13

"There is also a fundamental due process concern which transcends comparative disparate treatment analysis and casts a very long shadow over this particular proceeding. It is the time it took for the Service to produce the supervisor's files, thereby postponing the processing of this grievance for about three years. Management clearly has the right to pursue all remedies, procedures and appeals (as does the Union) such as contesting a request for information which it considers inappropriate; and there is no intention to place a chilling effect on the exercise of that right. But the determination to contest the Union's request through the NLRB and the Federal Courts must have consequences when the relevance of the requested information was apparent on its face; had been established by a prior arbitration award E4T-2A-D 38983, Arbitrator C. F. Stollenberg (sic) (1988), and adhered to in E7C-2F-D 39941 (1992 same Arbitrator); and seemed so evident to the NLRB and no doubt to the Federal Appeals Court. This is especially true when the dispute over relevance could have been raised in grievance or arbitration forums.

In such a circumstance the right of the Service must be weighed against the disadvantages it causes to a Grievant who has been removed and now must wait years in order to have a full hearing, including consideration of the disputed material. That the particular disparate treatment may or may not prove to be dispositive for an Arbitrator is not the point. The detriment to the Grievant because of the inordinately long delay before the material would become available for consideration as part of his defense against removal is. In my opinion, the delay in this particular case has been so long as to outweigh the Service's arguments on the merits. It outweighs any consideration of whether or not Grievant has been an ideal employee. It constitutes basic deprivation of due process and warrants retraction of the Removal Notice and reinstatement with back pay.

***The videotape is undoubtedly relevant information, as is the evidence obtainable by interviewing the Inspectors. Despite the clear mandate of Articles 15 and 31, the Service did not make the tape or the Inspectors available to the Union until November 3--after the Step 2 meeting and after the Grievant's status had been changed by the issuance of the Notice of Removal on November 1.

The National Agreement and the cases submitted by the Union are clear. The Service is required to provide relevant, properly requested information to the Union to allow it to process grievances. Article 31 requires this at any stage of the various processes delineated. Article 15 makes clear that the Step 2 hearing is the latest that the Service can provide this information. The Step 2 hearing here was held on October 29 and the information was not provided until November 2. This was not timely and the grievances must, therefore, be granted."

Arbitrator Randall M. Kelly
Trenton, New Jersey

Case No. A90C-1A-D 94005201 & 94011159
May 10, 1995

Pages 6-11

"The only issue before me at this time is the effect on this arbitration of the refusal of the Service to disclose the identity of the Confidential Informant and, as part of that, its refusal to allow the Union to interview the Confidential Informant or to review the recordings of transactions involving the Confidential Informant. The Union asserts that this clear procedural, due process violation mandates the dismissal of the disciplinary actions against the Grievant and, in the alternative, that if the case is not dismissed, that the Confidential Informant be barred from testifying and the recordings of transaction excluded. The Service argues that it is not required to reveal the identity of the Confidential Informant in order to protect the Confidential Informant and ongoing investigations.

I am denying the Union motion to dismiss the disciplinary actions against the Grievant and granting its motion to exclude testimony from the Confidential Informant and recordings of transactions between the Confidential Informant and the Grievant.

Here, the Service provided the Union the Investigative Memorandum and the ability to interview the Postal Inspectors involved. The supervisors who assessed the discipline did not have access to the identity of the Confidential Informant, nor did they review any recordings of transactions. The decision to take disciplinary action was based almost solely on the content of the IM and a newspaper account of the arrest of the Grievant. Without prejudging the significance of this fact, I feel that the Service should be allowed to present its case on the basis of the information available to the supervisors at the time the decision to impose discipline was imposed--information admittedly shared with the Union. This ruling preserves the spirit and intent of the relevant contractual provisions and balances the rights of the Service, the Grievant and the Union."

Arbitrator Joseph S. Cannavo, Jr.
New Brunswick, New Jersey

Case No. N7C-1N-C 33753
January 30, 1996

Page 5

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Grievant/Union APWU LOCAL 122	Nature of Allegation ART 8
----------------------------------	-------------------------------

1st NOTICE 8/20/04
2nd NOTICE 9/21/04
RETURNED _____

8/20/2004

Date of Request

To: **Giovanni Li Mandri**

Title: **TOUR 1 SUPERVISOR**

From: **Keith D. Anderson**

Title: **TOUR 2 STEWARD**

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. COPY OF ALL INFO RELIED UPON BY THE EMPLOYER, IN DECIDING TO PLACE JAY [REDACTED] IN A NON-PAY STATUS.
2. ANY TAPES, PHOTOS, PHOTO INSPECTORS' INFORMATION CONCERNING THE DISPOSITION OF THE CASE CONCERNING JAY [REDACTED].
3. COPY OF THE CHARGES BROUGHT AGAINST JAY [REDACTED] WHICH RESULTED IN THE PLACING OF JAY [REDACTED] IN A NON-PAY STATUS
4. NAME OF EMPLOYER WHO MADE DECISION CONCERNING JAY [REDACTED]
4. THE UNITED STATES POSTAL SERVICE
9.1.2.23, THE EMPLOYEE IS UNDER POSTAL SERVICE INVESTIGATION
THE INSPECTION SERVICE HAS ALL OF THE DOCUMENTS, PHOTOS AND TAPES
IN REFERENCE TO THE EMPLOYEE. CHIEF POSTAL INSPECTOR MUST AUTHORIZE DISCLOSURE.

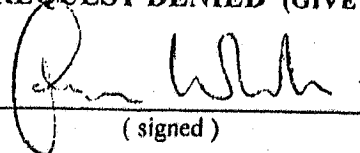
NOTE: Article 17, Section 3 requires the Employer to provide for review all documents, files, and other records necessary in processing a grievance. Article 31, Section 3 requires that the Employer make available for inspection by the Unions all relevant information necessary for collective bargaining 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 (GIVE REASON)

8-22-04

(date)



(signed)

G00C-4G-D 04204830

12/3/04

1. REQUEST FOR INFO 9/21/04
2. LETTER ORDERING JAY [REDACTED] TO REPORT FOR INVESTIGATIVE INTERVIEW
3. BUCK SLIP BY DICK [REDACTED]
4. TRACK AND CONFIRM #7004 0550 0000 0453 7026
5. CLOCK RINGS 22-1-04 LANDES
6. RULES FOR MANagements INVESTIGATION [2 pgs]
7. PS2608 [LANDES 1]
8. STEP 1 LANDES 1
9. CLOCK RINGS 19-2-04 LANDES
10. NOTICE OF PROPOSED REMOVAL 9-8-04 [3 pgs.]
11. TRACK AND CONFIRM 7004 0550 000 0453 8917
12. TRACK AND CONFIRM 0304 1070 0001 6727 1199
13. INVESTIGATIVE MEMORANDUM [by ROBERT HILL P.I.][3 pgs]
14. PS3811 [7003 1010 004 4287 8861]
15. LABEL OF PILL BOTTLE
16. CONSENT TO SEARCH JAMES [REDACTED] PICK-UP
17. STATEMENT BY J. [REDACTED] FOR TIME AFTER PI's STOPPED HIM TILL MEETING WITH UNION STEWARD

ADDITIONS AND CORRECTIONS

G00C-4G-D 04204830

11/10/2004

- 1) Step 2 decision received on 11/4/04. Certified #7004 1160 0001 4745 4745. Additions and Correction submitted within 10 days per art. 15
- 2) No request for Discipline or Concurrence by higher authority was submitted to Union even though Union requested a "Copy of all info relied upon by the employer in deciding to place J. Landes in a non-Pay status & "Name of employer who made decision on J. Landes. Since no request for further discipline or concurrence of higher authority was submitted to Union, the Union contends that no request for discipline was made by employer and no higher-level concurrence. Therefore the letter of removal is procedurally defective as per Art. 16 sec 8
- 3) The postal inspectors 'Investigative Memorandum' was only evidence presented by the employer, the "video" shown by the Postal Inspectors was inconclusive [and was not viewed by any party in till nearly 1 month after the letter of notice for removal.] Further it did not represent substantial evidence of guilt since view was blocked by equipment.
- 4) No finger print evidence, drug analysis or 'eyewitness' testimony has been presented.
- 5) Management made no other investigation. Grievant's due proves rights as per Art. 19 and EL 921 were not adhered to.
- 6) Irregardless of Legal counsel for the grievant, the employer is obligated to adhere to Grievant's discipline rights in Art 16, Due process rights in Art 15, 16, EL 921, 17 & 31
- 7) The Grievant's Union representative did provide input in the form of request for information, grievance investigation and the filing of grievances for J. Landes
- 8) The Grievant is a good Postal employee, substantial evidence was not presented by employer. The employer did not conduct a through and objective investigation. The employer had already decided to issue discipline to the grievant. The discipline is not for just cause there-for grievant should be made whole, reinstated to his position with back pay and benefits.

Keith D. Anderson

Keith D. Anderson,
Chief Steward Local 122



AMERICAN POSTAL WORKERS UNION, AFL-CIO

Grievant/Union	Nature of Allegation
APWU	Notice of Removal

2 January 2010

Date of Request

To: Stanford Logan Title: Fort Smith, Arkansas postmaster

From: Thomas Henry Title: President APWU local 1211

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. copy of the threat assessment/sexual harassment report issued by Sharon Davis
2. copy of all OIG reports concerning this notice of removal
3. Request to interview the following: Postal Inspectors who made the investigation,
4. Stan Logan, Jim Thomas
5. _____
6. _____

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)

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Grievant/Union	Nature of Allegation
APWU	Notice of Removal

2 January 2010

Date of Request

To: Stanford Logan Title: Fort Smith, Arkansas postmaster

From: Thomas Henry Title: President APWU local 1211

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. Bonnie Sweetens 3972 for 2008, 2009
2. All information used to make the decision for removal to include but not limited
3. to the request for discipline
4. All notes, emails, letters and fax documents concerning the notice of removal
5. Copy of Dovey Tabors 3972's for the past 5 years. (Ms Tabor had a second job
6. the union wants to see if Ms. Tabor ever worked while she called in sick.)

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)

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Grievant/Union	Nature of Allegation
APWU	Notice of Removal

SECOND REQUEST

13 January 2010

Date of Request

To: Stanford Logan Title: Fort Smith, Arkansas postmaster

From: Thomas Henry Title: President APWU local 1211

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. copy of the threat assessment/sexual harassment report issued by Sharon Davis
2. copy of all OIG reports concerning this notice of removal
3. Request to interview the following: Postal Inspectors who made the investigation,
4. Stan Logan, Jim Thomas
5. _____
6. _____

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)

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Grievant/Union	Nature of Allegation
APWU	Notice of Removal

SECOND REQUEST

13 January 2010

Date of Request

To: Stanford Logan Title: Fort Smith, Arkansas postmaster

From: Thomas Henry Title: President APWU local 1211

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. Bonnie Sweetens 3972 for 2008, 2009
2. All information used to make the decision for removal to include but not limited
3. to the request for discipline
4. All notes, emails, letters and fax documents concerning the notice of removal
5. Copy of Dovey Tabors 3972's for the past 5 years. (Ms Tabor had a second job
6. the union wants to see if Ms. Tabor ever worked while she called in sick.)

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)

American Postal Workers Union, AFL-CIO

STEP 2 GRIEVANCE APPEAL FORM

1 DISCIPLINE (NATURE OF) OR CONTRACT (ISSUE) Notice of removal		CRAFT clerk	DATE 1/18/2010	LOCAL GRIEVANCE # FS25320	USPS GRIEVANCE #
2 TO USPS STEP 2 DESIGNEE (NAME AND TITLE) Jim Thomas		INSTALLATION / SEC. CEN./ BMC Fort Smith, Arkansas			PHONE
3 FROM: LOCAL UNION (NAME OF) APWU Western Arkansas Area Local		ADDRESS PO Box 11169	CITY Fort Smith, Arkansas	STATE 72903	ZIP
4 STEP 2 AUTHORIZED UNION REP. (NAME AND TITLE) Thomas Henry President WAAL		AREA CODE 479-719-2810	PHONE (OFFICE)	AREA CODE	PHONE (OTHER)
5 LOCAL UNION PRESIDENT Thomas Henry		AREA CODE	PHONE (OFFICE)	AREA CODE	PHONE (OTHER)

WHERE - WHEN **STEP 1 MEETING & DECISION** MET WITH

6 UNIT/SEC/BR/STA/OFC	DATE/TIME 1/11/2010	USPS REP - SUPR Scott Koenigh	GRIEVANT AND/OR STEWARD sweeten/ Neuman			
7 STEP 1 DECISION BY (NAME AND TITLE) Scott Koenig		DATE AND TIME 1/11/2010 7:00	INITIALS	INITIALING ONLY VERIFIES DATE OF DECISION		
8 GRIEVANT PERSON OR UNION (Last Name First) Sweeten, Bonnie		ADDRESS	CITY	STATE	ZIP PHONE	
9 SOCIAL SECURITY NO.	SERVICE SENIORITY/CRAFT clerk	STATUS	LEVEL	STEP	DUTY HOURS	
OFF DAYS <input type="checkbox"/> SAT <input type="checkbox"/> SUN <input type="checkbox"/> MON <input type="checkbox"/> TUE <input type="checkbox"/> WED <input type="checkbox"/> THU <input type="checkbox"/> FRI						
10 JOB#/PAY LOCATION/ (UNIT/SEC/BR/STA/OFC)		WORK LOCATION CITY AND ZIP CODE			LIFETIME SECURITY <input type="checkbox"/> Yes <input type="checkbox"/> No	VETERAN <input type="checkbox"/> Yes <input type="checkbox"/> No

11 Pursuant to Article 15 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, LM MINUTES, ETC.

12 DETAILED STATEMENT OF FACTS/CONTENTIONS OF THE GRIEVANT

Union has requested copies of the OIG reports, copies of documentation, and to interview witnesses. The Postal Service has refused to give the union any information that was requested. The union has no ability to defend this employee without this information. Ms Sweeten categorically denies all of the charges listed in the notice of removal. Ms Sweeten repeatedly asked for union representation and was denied representation during the investigation made by Jim Thomas Ms. Sweeten was called into Mr. Thomas office where she was threatened and not allowed to leave until she had signed a document. This was not an informal conversation this was an investigation with threats.

List of attached papers as identified

13 CORRECTIVE ACTION REQUESTED

Rescind the notice of removal issued to Ms. Sweeten. on January 5, 2010. Make Ms Sweeten whole for any losses she has recieved as a result of this action.

Thomas E. Koenig, President
SIGNATURE AND TITLE OF AUTHORIZED UNION REP



4

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Grievant/Union APWU WAAL 1211	Nature of Allegation ARTICLE 1, 19
----------------------------------	---------------------------------------

July 29, 1999

Date of Request

To: RON [REDACTED] Title: POSTMASTER, VAN BUREN
 From: DENNIS TAFF Title: LOCAL PRESIDENT

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. COPY OF MOST RECENT RURAL CARRIER JOB OFFER TO DORIS [REDACTED]
2. _____
3. COPY OF ANY DOCTOR'S SUMMARY, COMMENTS, AND/OR REASONS FOR INABILITY TO PERFORM JOB
4. _____
5. _____
6. _____

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)

SEE ATTACHED

Author: RANDOLPH B HAMLIN at LRAR002L
Date: 7/29/99 6:44 PM
Subject: Re: APWU request

NO, IT IS PERSONAL MEDICAL INFO, AND NOT REVELANT TO THE GRIEVANCE HER
CONDITION IS NOT AN ISSUE NOR IS HER WORK IN CLERK CRAFT. AN
ARBITRATOR JUST RULED THAT IT WAS OKAY TO WORK RURAL CARRIER LIMITED
DUTY IN CLERK CRAFT WILL SEND YOU A COPY RH

(4)

Reply Separator

Subject: APWU request
Author: ~72956 POSTMASTER at LRAR002L
Date: 7/29/99 3:44 PM

Randy,

The APWU is proceding with a grievance concerning an RCA on limited
duty they assert is working in the clerk craft.

She recently went to her doctor to determine if she could resume
her activities as an RCA. He returned a summary letter and the
comments on the CA-17.

The union is requesting a copy of the information. Are they
intitled to this information?

Thanks
Ron

American Postal Workers Union, AFL-CIO

A PROGRESSIVE ORGANIZATION DEVOTED TO THE INTERESTS OF
POSTAL EMPLOYEES AND AN IMPROVED SERVICE
Western Arkansas Area

LOCAL

Ft. Smith

City

Arkansas

STATE



July 29, 99

19

To Ron ██████████
Postmaster
Step 2 Designee



Grievance # VB 98008-- Class Action

STEP 2 ADDITIONS AND CORRECTIONS

The Union is proceed with the grievance for several reasons:

- (1) The RCR in question has questionable medical restrictions. She has performed nearly every duty as a clerk, city carrier, and custodian for over ten years. She has worked letter mail, flats, cased city routes, swept floors, carried out trash, and even trimmed hedges, but for some reason she can not carry a rural route. The only restriction that even has a remote possibility of not allowing her to carry a route is the doctors restriction of not twisting and pulling mail over a care seat. (Attachments 1 and 2)
- (2) The Union has asked that she be offered a vacant route which for the most part only involved sorting mail in cluster boxes on the route. She in fact was offered this job, but the Postal Service made no effort what so ever to explain to the RCR's physician that this job was not a normal rural route position or that this position could be modified even further. Instead the Postal Service sent the physician the standard job description of a rural carrier without any explanation at all. (attachment 3) The Union contends that the Postal Service has not made any effort to place her in any rural route position with or without modifications. Section 546 of the ELM requires the Postal Service to make every effort to assign her work in her own craft.
- (2) The postal Service has also violated article 17 and 31. They have the denied the Unions request for pertinent information. The summary letter and CA-17 that the Union requested is relevant to the grievance, especially to the most recent job offer to the RCR as described in the last paragraph. (Attachment 4)
- (3) They Postal Service has never provided the Union or yourself with any concrete documentation or evidence that she has a valid claim of injury on the job, despite requested from the Union or yourself (see attachment 5). No one seems to know, or care, exactly what her status really is.

**REGULAR ARBITRATION PANEL
SOUTHWEST AREA**

IN THE MATTER OF THE ARBITRATION¹) GRIEVANT: Class Action
(
 between) POST OFFICE: Van Buren, Arkansas
(
UNITED STATES POSTAL SERVICE) USPS Case No: G94C-4G-C 99247737
(
 and) APWU Case No: VB-98-008
(
AMERICAN POSTAL WORKERS UNION,)
AFL-CIO)

BEFORE: Ruben R. Armendariz, Arbitrator

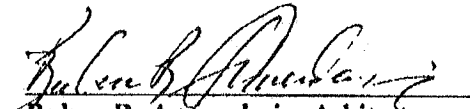
APPEARANCES:

For the U. S. Postal Service: Carol Chappell, Labor Relations Specialist
For the Union: Dennis Taff, APWU Arbitration Advocate and State Representative

Place of Hearing: Van Buren, Arkansas
Date of Hearing: November 5 and 24, 2003
Date Hearing Closed²: January 2, 2004
Date of Award: January 25, 2004
Relevant Contract Provisions: Article 1, 7, and 19
Contract Year: 2000 - 2005
Type of Grievance: Contract/Rural Carrier Associate/Relief – Cross Craft Assignment

AWARD

The grievance is sustained. The Employer is directed to have Ms. Linton cease from performing any clerk craft duties. Ms. Linton is to return to the Rural Carrier Unit to perform available work within her own craft. The appropriate clerk craft employees are to be made whole for all lost wages and benefits for all hours worked by Ms. Linton from the date of filing of this grievance on May 9, 1998, until Ms. Linton has ceased from performing clerk craft duties.



Ruben R. Armendariz, Arbitrator

¹ These proceedings were tape recorded by this Arbitrator to assist in studying the record and preparing this award. Said tapes are immediately erased upon issuance of the Award and are reused for other arbitrations.

² By agreement of the parties, post-hearing briefs were to be postmarked no later than December 24, 2003, with the last brief received closing the record. The parties briefs were timely postmarked and the last brief received was on January 2, 2004. The arbitration proceeding officially closed on January 2, 2004.

pulling cases when full, answering the phone and performing supervisory work. She stated that she is entitled to no more than 25 hours of work per week according to the modified router position. She stated that Van Buren falls within her medical restrictions. She has no problem lifting but if she turns her neck, she gets into trouble and twisting is also a problem. She stated that as a modified router she cased mail, flats, letters and boxed mail. **She also stated that she had also been assigned to case routes for the rural carriers.** She stated that she also performed administrative duties, answered the telephone and sorted out colored letters. She stated that she comes to work at 5:00 a. m. and would distribute mail for 3 hours and take empty equipment for 15 to 30 minutes. She stated the router position no longer exists because the carriers wanted to put up their own mail. She stated that she is not aware of a matrix for a rural relief. She stated that Management has hired several RCA's. She stated that presently, she cannot join the Rural Letter Carriers Union or the Clerk Union.

This Arbitrator finds that the testimony provided by Graham, Davis and Linton is un rebutted.

This Arbitrator additionally finds that in accordance with its requirements under the Federal Employee Compensation Act (FECA), the Postal Service Management is obligated to find meaningful work for Ms. Linton when she was able to return to limited duty. The Union does not contest Management's obligations in the past when she was offered a modified router position within the City Letter Carrier unit in this regard. But, the Union does question whether Management complied with Section 546 of the ELM (when they reassigned Ms. Linton to perform Clerk Craft duties in 1998), which requires Management to make "every effort" to reassign the concerned employee within the employee's present craft or occupational group. In order to fully explore this point, the Union attempted to gather information to assist in the investigation of this issue.

On July 29, 1999, after the Step 2 meeting was held on these grievances and before the Step 3 meeting, Union President Taff submitted a Request for Information and Documents to Postmaster Ron Ramsey. The information sought by the Union was a copy of the most recent job offer to Ms. Linton and a copy of any doctor's summary, comments, and/or reasons for Ms. Linton's inability to perform her Rural Carrier Associate/Relief job position. This information was also needed to determine if Ms. Linton had been offered another modified job position in the clerk craft to perform

clerk craft duties that she is presently performing. This Arbitrator finds that this information is clearly relevant to this grievance, as it deals directly with the question of the type of work Ms. Linton could perform and any limitations on how she could perform on the job duties assigned. Such information is not privileged medical data. For reasons not explained in the record, this information was denied by Postmaster Ramsey and not provided to the Union. This Arbitrator finds that the failure to provide the requested information had several consequences. First, the Union was not able to fully investigate this grievance. Second, Management could not present a meaningful argument to the Union at either Step 2 or at Step 3. Third, Management was precluded and could not introduce evidence relating to Ms. Linton's work restrictions at this arbitration.

One of the Union's main arguments is that Management did not attempt or to fully explore possible assignments within the Rural Carrier Craft before assigning Ms. Linton to Clerk Craft duties. A second contention is that Management assigned Clerk Craft duties to Ms. Linton after they had resolved this issue in the prior grievance to not assign her any clerk craft duties. It is well known that the Union bears the burden of proving its case and this Arbitrator finds that the Union has met its burden of proof. The Union established that Management breached its grievance settlement by assigning Ms. Linton to perform Clerk Craft duties. The Union also established that Postmaster Ramsey assigned Ms. Linton to casing rural routes and distribution work in her own craft after this grievance had been filed to establish work availability in the rural carrier craft, thereby establishing that the pecking order of ELM 546 was not properly followed. It is also clearly established that Management must provide relevant information to the Union upon request. There is arbitral precedent for sustaining grievances when a failure to provide information impacts the Union's ability to assess the merits of a grievance or to carry its burden of proof based on such information. In this case, without knowledge of Ms. Linton's work restrictions, the Union could not conduct a meaningful inquiry into the extent of work availability in the Rural Carrier craft in comparison to medical work restrictions, if any. The Union had requested information bearing directly on this point, but the information was not provided.

In these circumstances, the inference created by the Union's evidence must be resolved against Management. See Arbitrator Marlatt decision in case no: S7C-3B-C 21452/54, where he ruled that the failure to provide information over requested medical restrictions and limited duty job offers of a rural carrier draws an inference that the rural carrier was fully capable of performing her

full duties as a rural carrier.

Although, the Postal Service addressed a "new" argument in this proceeding, in which, they argued that they are precluded from assigning work to Ms. Linton in her own craft because it was a violation of the Rural Carrier National Agreement and because a Rural Carrier route is an "evaluated route." This Arbitrator finds that this is an important issue worthy of discussion and which has been fully addressed by Arbitrator Fletcher in case no: G7C-4U-C 26744 (1992), where he stated,

"The problem is – can the pecking order, as developed by the ELM, be significantly altered by provisions within the NRLCA Agreement (which the Service interprets as no possibility for any limited duty and a requirement that Relief carriers be paid the evaluated hours even though they may not work the entire assignment).

Evidence, contract language, Handbook and Manual References, as well as accepted tenets of contract construction, are not present so as to suggest that this is the standard which should be applied in these circumstances. Part 546.14 of the ELM is clear – an effort must be made to find work for an employee within his own Craft first. This requirement cannot be passed over on the basis that the Rural Carriers Agreement does not provide for light duty assignments and Relief Carriers are entitled to be paid the evaluated hours of the route even though they may have worked only a portion of the route. Anything else would be to create a constructive application of the NRLCA Agreement so that all injured Rural Carriers would automatically be reassigned to a different Craft when their injuries or disabilities were partially overcome. Persuasion this is the accepted result is missing. Moreover, such a situation would constructively alter Part 546.14 of the ELM and amend other Crafts agreements without the involved parties consent and participation.

The procedures of the ELM (and the local pecking order developed by APWU and Colorado Springs Management) cannot be altered, with respect to Clerk Craft work and assignments, on the basis of special or unique requirements contained in the NRLC Agreement unless the APWU agreed."

The Postal Service in further support of their position provided the National Arbitration Award of National Arbitrator Bernard Dobranski in case no: #J90C-1J-C 92056413 (1998) as a Step 3 response. In particular, he stated, "Section 546.141 (a) is particularly important in the instant

case. This section sets forth the procedures for current employees who have partially overcome their disability and considerations in effecting limited duty assignments. In essence, the Postal Service is required when an employee has partially overcome a disability, to make every effort toward assigning limited duty to the employee within the employee's medical restrictions and to minimize any adverse or disruptive impact on the employee. In making the limited duty assignment, the Postal Service is also directed to follow a certain order."

This Arbitrator finds that this National Award by National Arbitrator Dobranski not only enforces the provisions of ELM 546 mandating a pecking order. It also enforces the provisions and obligations of FECA, as it applies to all employees including the rural carriers.

In view of the foregoing, this grievance must be sustained. It is likely, even probable, that Management had valid reasons to make this cross-craft assignment to Ms. Linton. By failing to provide relevant information on that issue to the Union at Step 2 or at Step 3, however, Management effectively precluded any consideration of such evidence in arbitration.

Accordingly, this Arbitrator issues the following Award.

VII. THE AWARD

The grievance is sustained. The Employer is directed to have Ms. Linton cease from performing any clerk craft duties. Ms. Linton is to return to the Rural Carrier Unit to perform available work within her own craft. The appropriate clerk craft employees are to be made whole for all lost wages and benefits for all hours worked by Ms. Linton from the date of filing of this grievance on May 9, 1998, until Ms. Linton has ceased from performing clerk craft duties.

Issued at San Antonio, Texas, the 25th day of January 2004.

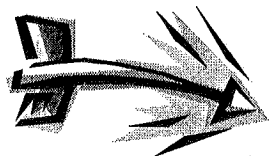
Ruben R. Armendariz
Arbitrator

Nor is management permitted to play games with the appropriate Step 2 designee. For instance, Article 15, Section 2, Step 2(a) requires that:

In any associate post office of twenty (20) or less employees, the Employer shall designate an official outside of the installation as the Step 2 official, and shall so notify the Union Step 1 representative.

The converse of this, of course, can also be argued. In installations of more than twenty (20) employees, it should be inappropriate for management to deprive the installation head of her Step 2 decision making authority. **Arbitrator Kahn**, for instance, reasoned:

"Article 15, Section 2(a) and (c), clearly intend, in my judgement, that, except at installations with 20 or fewer employees (Columbus is much larger), the installation head or his/her designee *shall* receive the Step 2 appeal, *will* conduct the Step 2 meeting, and *shall* have authority to grant or settle the grievance in whole or in part.'...Accordingly, I find that the Step 2 meeting takeover by Singleton was usurpation of the authority and responsibility of the Columbus Post Office to hear and decide the grievance at that level."²⁹¹



DENIAL OF REQUESTED INFORMATION

Yet another procedural deficiency which will frequently arise during the grievance procedure is the Employer's failure (or more often, refusal) to produce requested, relevant information. Although Article 17 guarantees the steward's right to review "documents, files and other records necessary for processing a grievance," while Article 31 recognizes the Employer's obligation to "make available [to] the Union all relevant information," and in spite of the Article 15 requirement that the parties' Step 2 representatives "cooperate fully" and "exchange copies of all relevant papers or documents," Management will nonetheless, all too frequently remain hesitant to share relevant information. Even, when finally forthcoming, management will often delay providing relevant information until shortly

²⁹¹ Arbitrator Mark L. Kahn, Case No. J94C-4J-D 97003629/6864, July 7, 1997, p. 12. On the other hand, although the APWU was not signatory, the recent Step 4 Settlement (I94N-4I-C 99008899, April 8, 1999) between the USPS and NALC on this subject is worthy of note:

"We further agreed that there is no language in the National Agreement which prohibits designating a Step 2 representative outside an installation of more than 20 employees. In these situations, if the Step 2 meetings have been held in the installation, that practice will continue absent an agreement to the contrary."

before the arbitration hearing. **Arbitrator Willingham**, in a case dating back to 1972, discussed the Employer's obligation to share all information being relied upon to impose discipline:

"Thus the principal is well supported that where a grievant may only be discharged for just cause where a series of grievance steps are provided before arbitration that an employee who is being discharged has a right to a good faith processing of the grievance including the right to examine the pertinent medical and other records upon which the employer is relying. In this case, apart from this general rule of law, the particular Agreement before the Arbitrator specifically provides in Article XVII, Section 3, second paragraph, that the steward may request and shall obtain access to review the documents, files and other records necessary for processing a grievance. The facts in this case demonstrate a contract violation through violation of employer's obligation to process the grievance in good faith.

"It is not a condition for the application of the law of disclosure that the Union demonstrate just how the information would have been used if received - the failure to produce is alone enough to void the discharge. If a grievant does not know what is in the mind of the employer, he cannot bring together the facts and representation needed to defend, disprove or to work out alternative dispositions."²⁹²

Arbitrator Buckalew provided this thoughtful analysis on the impact of the Employer's failure to provide requested information until after the Step 2 meeting and decision:

"As a preliminary matter, I reject the Postal Service's argument that the failure to provide the requested relevant medical reports was not a significant error. The Union made a clear and unequivocal request for all reports and notes relied upon by Kopka in making the decision to remove Radzik. Dr. Caprio's report figured prominently in that decision but was withheld from the Union until after the Step 2 hearing. The contract and the JCIM clearly and unambiguously set out the Postal Service's obligation to provide relevant information necessary for enforcement, administration, or interpretation of the contract. The contract recognizes an affirmative commitment to provide 'all relevant information' needed to determine whether to file or continue the processing of a grievance. The response to the Union's legitimate request for all medical records relied upon in making the decision to discharge the grievant is at odds with the contract's clear language for the release of 'all relevant necessary' information. Any doubt about the required scope of disclosure is dispelled by the JCIM which explains that relevant information includes medical records necessary to investigate or process a grievance. Midura's failure to immediately supply the requested documents, including Dr. Celona's IME report, is simply inexplicable when viewed through the promises made in the contract and the clear explanation of that commitment contained in the JCIM. The unjustified demand that the Union obtain releases from Radzik for documents she had never seen amounts to nothing more than a simple denial of Sonos' requests and a plain violation of the contract.

"The suggestion that supplying the documents after the Step 2 meeting and Step 2 decision renders the contract violation harmless is not persuasive. President Flattery objected promptly and directly to the reliance on the requested-but-not-provided documents and accurately identified the prejudice caused the grievant. Without the medical reports the Union and Radzik could not prepare for the Step II and were unable to respond to the Postal Service's position on Dr. Celona's report which in turn thwarted any chance of resolving the grievance prior to arbitration.

"...The report was crucial, relevant and material to the initial disciplinary action and the Postal Service's justification for denying the grievance. Fidelity to the Agreement and the parties' understanding of the need for a level playing field to ensure a fair and equitable grievance procedure argue strongly for granting

²⁹²Arbitrator James J. Willingham, Case No. A-C 276, December 11, 1972, pp. 18-20.

the grievance."²⁹³

Similarly, see **Arbitrator Williams**, who said:

"Article 31.2 requires that Management furnish to the Union information necessary to process a grievance. Article 15.2, Step 2, requires Management to furnish facts relied upon, and the parties are to exchange all relevant papers and documents. Thirteen days before the Step 2 meeting, the Union forwarded a request for information it felt necessary to process the grievance and for documents it felt to be relevant. None was furnished by Step 2. A second request (MX 6) was received one day after the Step 2 hearing. Thus, there is little doubt that the grievant's case presentation at Step 2 was hampered when the Union had not received copies of the grievant's medical restrictions, information as to any attempt that Management had made to provide work within the grievant's limitations, all information upon which the notice of removal was based, names of employees on light duty, etc."²⁹⁴

In yet another decision, finding that the failure of the Employer to provide requested relevant information until after the Step 2 discussion violated the Grievant's due process rights, **Arbitrator Penn** explained:

"In this case the Arbitrator also finds that the Postal Service violated the Agreement between the parties by failing to provide the Union with the information it requested. Article 15.2 (Step 2) which states, 'The parties representatives shall cooperate fully in the effort to develop all relevant papers or documents in accordance with Article 31.' Article 31.3 (Information) states, 'The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of the Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information...Requests for information relating to purely local matters should be submitted by the local Union representative to the installation head or his designee...'

...
"...Mr. Booker denied the grievance at Step 2 without giving the steward an opportunity to present a defense on behalf of the grievant based on the records she had asked for. The Union got none of the information requested until several days after the Step 2 hearing was held.

"The arbitrator finds that the Postal Service violated the Agreement by refusing to provide the Union with the relevant information during the processing of the grievance. The Postal Service had the information. The Union had requested the information in the appropriate way and the request had been approved, yet the Postal Service refused to share it as required by the Agreement. The Union cannot represent an employee, if it does not have access to the information on which the decision to remove an employee was made."²⁹⁵

Where the Employer's failure to provide requested information until two (2) days after the

²⁹³ Arbitrator Timothy J. Buckalew, Case No. B00C-1B-D 06009128, August 11, 2006, pp. 13-14.

²⁹⁴ Arbitrator J. Earl Williams, Case No. S4C-3W-D 51083, November 30, 1987, pp. 8-9. See also, Arbitrator Carl F. Stoltenberg, Case No. E7C-2F-D 39941/41432, April 21, 1992, pp. 20-21; Arbitrator Mark L. Kahn, Case No. J90C-1J-D 94048041 et al, April 28, 1995, p. 14; Arbitrator Jonathan Dworkin, Case No. J90C-1J-D 96014548/17277, December 24, 1996, pp. 14-21; Arbitrator Randall M. Kelly, B00C-4B-D 06130297, August 10, 2006; or, Arbitrator Carl C. Bosland, Case No. E00C-4E-C 06132811; January 10, 2007.

²⁹⁵ Arbitrator Frances Asher Penn, Case No. J98C-4J-D 01008166, July 27, 2001, pp. 5-6. Similarly, for a situation where the Employer failed to provide critical requested information, see yet another award by Arbitrator Frances Asher Penn, Case No. J00T-1J-D 03106997, July 28, 2004. See also, Arbitrator J. Earl Williams, Case No. S4C-3W-D 51083, November 30, 1987.

grievance was appealed to Step 2 was compounded by rendering an untimely Step 2 decision subsequent to the Union's appeal to arbitration **Arbitrator Pecklers** found that these Article 15 and 17 violations were sufficient to overturn a removal for violation of a LCA without consideration of the merits. The Arbitrator explained:

"The Postal Service controls its own destiny in this regard. Therefore, it voluntarily opens the door to a collateral attack on its disciplinary action, when a cavalier response to document production is undertaken. Were this contractual transgression not enough, Management also failed to issue a Step 2 answer in the case. I recognize that this is in and of itself not an automatically fatal defect, as the Union may appeal to the next step. However, I specifically credit the Union's contention that Article 15.4 requires a good faith observance by the parties. Coupled with the Article 17 violation, I find that the Postal Service has failed to adhere to this obligation. Moreover, these actions eviscerate Management's espoused tremendous respect for the grievance/arbitration procedure, which it proffered at the hearing."²⁹⁶

The Union's Article 17.3 rights include the right to "interview...supervisors and witnesses." Frequently employees are reluctant to "get involved." Supervisors think they are just "too busy." Employees, particularly those hostile to the interests of the disciplined employee don't want to be interviewed. The Employer must cooperate with the Union to make relevant supervisors and witnesses available for interviews. **Arbitrator King** explained this requirement:

"The obvious intent of the above provision [Article 17.3] is to require that Postal Service management, involved employees and witnesses cooperate with the Union both in arriving at a determination as to whether grounds for a grievance exist and in the preparation of the prosecution of its case once a positive determination is made. Both the Union and the Postal Service are bound by the terms of the Contract. Postal employees are agents of the Postal Service and as such they are also bound by the terms of the Contract. Consequently, the Postal Service has the authority and contractual responsibility to require that they cooperate as witnesses when the Union makes a proper request to management. Failure of the employee to cooperate is a violation of the Contract and should subject the refusing employee to discipline by management. To view the provisions of Article 17.3 otherwise would render useless, at the whim of the employee, that provision of the Contract which grants the Union the 'right to interview the aggrieved employee(s) supervisors and witnesses...' Further, when management fails to enforce the quoted provision of the Contract against an uncooperative employee, the grievance process becomes inefficient, the Union is hampered in the preparation of its case and, as in this case, the Grievant's due process rights may be denied.

...

"The failure of the Postal Service to require that Mrs. Levine cooperate with the Union by submitting to an interview violated the provisions of Article 17.3 of the National Agreement between the parties. It hampered the Union in the preparation of its case and resulted in the denial of due process to the Grievant. This action alone is sufficient to sustain this grievance."²⁹⁷ [emphasis added]

²⁹⁶ Arbitrator Michael J. Peckers, Case No. A00C-4A-D 05152470, April 12, 2006, pp. 11-12.

²⁹⁷ Arbitrator Hamah R. King, Case No. G00C-4G-D 02137143, November 6, 2002, pp. 15-16.

Article 15 obligates the Employer to share all relevant information relied upon at Step 2. However, the Union should never rest on that technical obligation and fail to officially request information it believes to exist. The failure to make such a request may well be considered "sitting on one's rights" by an arbitrator.²⁹⁸

Where the Employer failed to provide the Investigative Memorandum until after the Step 3 meeting and finally provided an unedited copy of the Postal Inspector's video tape shortly before the arbitration hearing, **Arbitrator Gregory** concluded:

"Article 31.3 of the National Agreement requires that the Postal Service disclose all information relevant to the processing of a grievance. Article 15.2 Step 2(d) further requires that both parties 'exchange all relevant documents and papers in accordance with Article 31' at the Step 2 meeting. In this instance, the Union repeatedly asked for crucial evidence in the possession of the Postal Service but did not receive the Investigative Memorandum and the edited version of a video tape until after the Step 3 meeting and did not get a copy of the unedited version of the tape for purposes of comparison until the arbitration hearing. This is not a situation where there is a reasonable explanation as to why the Postal Service failed to comply with the National Agreement; it simply failed to honor its obligations under the contract. The Investigative Memorandum and video tape, in its edited and unedited forms, are ruled inadmissible."²⁹⁹

The Employer can be expected to be particularly reluctant to share information when the issue is disparate treatment. They will undoubtedly assert Privacy Act concerns in delaying providing comparative information. This will be particularly true when the comparison employee in a non-bargaining employee.³⁰⁰ Where the Employer refuses to provide relevant comparative information, they do so at their peril. **Arbitrator Baldwin**, for instance, said:

"While Arbitrators generally do not relish having to sustain a grievance where the evidence demonstrates that the employee engaged in the conduct for which he/she was discipline, where as here, the failure to supply the requested relevant information makes it impossible to determine whether or not Grievant was treated disparately. I am unable to conclude whether the Service, which has the burden to do so, had just cause to issue the 12 day suspension. Bullard must live with the fact tat it was his failure to supply the

²⁹⁸ See, for instance, Arbitrator Fred D. Butler, Case F00C-1F-D 04178971/214029, April 27, 2005, pp. 12-13.

²⁹⁹ Arbitrator Mary Volk Gregory, Case No. E00T-4E-D 04043651, November 24, 2004, p. 1. Similarly, holding that although the Employer was prohibited from introducing at the hearing documents requested by the Union but never provided, the error was not fatal to the discipline, itself, see, Arbitrator Michael E. Zobrak, Case No. C00C-4C-D 03054532, April 28, 2003.

³⁰⁰ However, note Arbitrator Carlton J. Snow, Case No. H7N-5C-C 12397, July 29, 1991, p. 29:

"Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Employer violated the parties' National Agreement when the Employer denied a Union request for information respecting the possible discipline of two supervisors from the grievant's post office, who are alleged by the Union to have engaged in specific misconduct both close in time to and similar to that charged against the grievant, so that the Union could compare the actual conduct and subsequent treatment of the grievant and the supervisors and/or potentially argue that the grievant's discharge was disparate and thus not for just cause."

See also: Arbitrator Elliott H. Goldstein, Case No. J98C-1J-D 99259023, January 30, 2001.

information that brought about this result. Where, as here, due process — the basic notion of fairness is lacking because information that might have been helpful to Grievant's defense is improperly withheld the great body of arbitrators have set aside the discipline imposed. While there is always the possibility that had Bullard supplied the requested information he might have been able to adequately demonstrate that the type or degree of the written complaints made on Downtown Station window clerks were distinguishable, the fact remains that for purposes of this case, no one will ever know because he chose not to supply the information."³⁰¹

Another area where the Employer frequently resists providing requested information is when the Postal Inspectors and criminal charges are also involved. The Employer will suggest that information cannot be provided to the Union because the information is part of the criminal proceedings. They raise this defense at their own jeopardy. As **Arbitrator Walt** noted:

"The Employer's position regarding the release of information in the possession of the Postal Inspection Service is without contractual foundation, and no legal authority was advanced to support it. In an arbitration proceeding, the Postal Inspection Service cannot be separated from the United States Postal Service; its status is that of the 'Employer.' Secondly, once management imposes discipline, the Union is contractually entitled by virtue of Article 17.3 to '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.' Furthermore, Article 31.3 obligates management to 'make available for inspection by the Union all relevant information necessary for...the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or continue the processing of a grievance under this Agreement.' That obligation cannot be circumvented by the fact that documents which fall within the purview of the cited contractual provisions are in the possession of the Postal Inspection Service. When the Employer determines the need to impose discipline, it must comply with its obligations under the National Agreement. Relevant documents must be produced and if in the possession of the Inspection Service, they must be obtained for Union 'access' and 'inspection.'"³⁰²

Our Union's position is that not only are we entitled to receive such relevant information, we are entitled to receive it in a timely manner. **Arbitrator Kelly**, for instance, dealt with a 2 month delay in providing requested information on an Emergency Suspension:

"I find that the Emergency Placement of the Grievant in Off-Duty status on September 1, 1993 must be overturned because of the failure of the Service to provide the Union with requested, relevant information in a timely manner.

"Despite the clear mandate of Articles 15 and 31, the Service did not make the tape or the Inspectors available to the Union until November 3--after the Step 2 meeting and after the Grievant's status had been changed by the issuance of the Notice of Removal on November 1.

"The National Agreement and the cases submitted by the Union are clear. The Service is required to

³⁰¹ Arbitrator Louis V. Baldwin, Jr., Case No. H94C-4H-D 97015599, January 30, 1998, pp. 10-11. See, also, Arbitrator Debra Simmons Neveu, Case No. G98C-1G-D 99180095, November 26, 1999.

³⁰² Arbitrator Alan Walt, Case No. J98C-4J-D 00167707/00275913, April 10, 1992, pp. 12-13. See also, Step 4 Decision, Case No. H1C-4A-C 26986/7, August 2, 1984 or, Arbitrator M. David Vaughn, Case K00C-1K-D 03112078, September 27, 2003..

provide relevant, properly requested information to the Union to allow it to process grievances. Article 31 requires this at any stages of the various processes delineated. Article 15 makes clear that the Step 2 hearing is the latest that the Service can provide this information. The Step 2 hearing was held on October 29 and the information was not provided until November 2. This was not timely and the grievance must, therefore, be granted."³⁰³

In a similar case, Arbitrator **Thomas** reviewed a situation where the Employer failed to provide the Postal Inspectors' Investigative Memorandum in response to the Union's request prior to issuing the Step 2 decision and discussed the impact of that failure on possible resolution at both Step 1 and at Step 2, saying:

"The employer's failure to provide the union with the Postal Inspection Service Investigative Memorandum prior to the Step 1 grievance meeting severely prejudiced the union's position. This is so because it is undisputed that at Step 1, the employer made an offer to settle this matter...The union, not being in a position to review the evidence, rejected the employer's offer of settlement. That matter was compounded when, at Step 2, the employer's designee showed Mr. Rios the investigative memorandum but did not give it to him to read...Thus, Mr. Rios did not have the critical document in his possession, on behalf of the union, at the Step 2 meeting either. When he did receive the report...the Step 2 decision had already been reached. But for the employer's failure to provide the union with the requested information, it could have settled this matter in a manner satisfactory to Mr. Rivera rather than having the instant grievance denied. The employer's failure to provide the union with requested information improperly interfered with its role as bargaining representative and resulted in the letter of warning being issued to the Grievant without 'just cause'. A basic principle of 'just cause' holds that an employee is entitled to due process before disciplinary action is issued. If 'due process' means anything, it includes the right to an employee to have documents properly requested from the employer in order to prepare for grievance meetings."³⁰⁴

Failure to provide requested information in a timely manner also violates the National Labor Relations Act. See for instance, *Shaw's Supermarkets, Inc. v. UFCWU*, 339 NLRB 1, where the Board upheld the determination of the Administrative Judge that:

"The issue then is whether the Act was violated by the dilatory manner in which...requested information was turned over. Once a good faith demand is made for relevant information, it must be made available promptly and in useful form. Even though an employer has not expressly refused to furnish the information, its failure to make diligent effort to obtain or to provide the information 'reasonably' promptly

³⁰³ Arbitrator Randall M. Kelly, Case No. A90C-4A-D 94009758, November 7, 1994, pp. 4-6.

Where the USPS withheld information regarding three supervisors, whom the Union alleged were treated differently, for nearly three (3) years while it appealed an NLRB decision [USPS & APWU, 301 N.L.R.B. 104] that the information must be provided, Arbitrator Josef P. Sirefman, Case No. N7C-1N-D 002177, March 18, 1994, said at p. 12:

"In such a circumstance the right of the Service must be weighed against the disadvantages it causes to a Grievant who has been removed and now must wait years in order to have a full hearing, including consideration of the disputed material. That the particular disparate treatment may or may not prove to be dispositive for an Arbitrator is not the point. The detriment to the Grievant because of the inordinately long delay before the material would become available for consideration as part of his defense against removal is. In my opinion, the delay in this particular case has been so long as to outweigh the Service's arguments on the merits. It outweighs any consideration of whether or not Grievant has been an ideal employee. It constitutes basic deprivation of due process and warrants retractions of the Removal Notice and reinstatement with back pay."

³⁰⁴ Arbitrator Irene Donna Thomas, Case No. A98C-1A-D 02037171/012549, May 21, 2002, pp. 17-19.

