

INTERROGATION BY THE POSTAL INSPECTION SERVICE



Percy Harrison, Jr.
NBA, Clerk Division

2004

Dear Steward:

This guideline is intended for those who find themselves in the position of being a representative for an employee when they are called before a postal inspector.

The order of this book is to show where we (APWU) have come from in our fight to be recognized as a true representative of the employee during these interviews, as oppose to just another body in the room.

The inspector's role (ASM 13), as well as the headquarters' position of both the APWU and the Inspector General is clearly spelled out.

While this book gives us the rights that our members have, it is intended for stewards, who will have an active role in being in the interview, so they know what they can do.

Thanks must be given to Joyce Robinson, APWU Research and Education Director, for perfecting this book from it's original format, as it is now truly a teaching tool, specific to the needs of the steward.

Thanks, Joyce, information is the key.

Percy Harrison, Jr.
NBA, Clerk Division

Introduction

For some reason employees are petrified by the thought of talking to a postal inspector. It is the responsibility of the union shop steward to advise the employee of his/her rights under the contract and the law.

If questioned by a postal inspector, even if the employee believes that he or she is not guilty of any wrongdoing, instruct the employee to:

- Remain calm.
- Correctly identify yourself.
- Request a steward, a union representative or an attorney as appropriate.
- Remain silent until you have consulted with your steward or attorney.
- Do not physically resist arrest or search of your person or property. However, request to see a search warrant. If they do not have one, inform them that you do not consent to the search.
- Don't sign any papers waiving your rights without consulting with your steward or attorney.
- Do not deny or admit to any allegations without consulting with your steward or attorney.
- Do not sign any type written statements or make oral remarks without consulting with your steward or attorney.

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

ASM 13

Administrative Support Manual

July 1999

2 Audits and Investigations

21 General

211 Authority

211.1 Responsibility

211.11 Inspector General

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

211.12 Chief Inspector

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

211.13 Designation of Functions

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

211.14 Federal Laws and Postal Regulations

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

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

211.2 Arrest and Subpoena Powers**211.21 Authorization**

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

- a. Carry firearms.
- b. Serve warrants and subpoenas issued under the authority of the United States.
- c. Make arrests without warrant for offenses against the United States committed in their presence.
- d. Make arrests without warrant for felonies cognizable under the laws of the United States, if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony.

211.22 Limitations

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

211.3 Access to Records**211.31 Records and Documents**

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

211.32 Disclosure

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

211.33 Exceptions

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

- a. For information from the covers of mail, see 213. For dead mail, see the *Domestic Mail Manual*.
- b. For access to employee restricted medical records and Employee Assistance Program records, see Handbook EL-806, *Health and Medical Service*, Chapter 2, and *Employee and Labor Relations Manual* (ELM) 870.
- c. For access to an employee's Form 2417, *Confidential Statement of Employment and Financial Interests*, see the ELM or 39 CFR 447.42(e)(2).

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

**Re: Role of Inspection Service in Labor Relations
Matters**

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

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

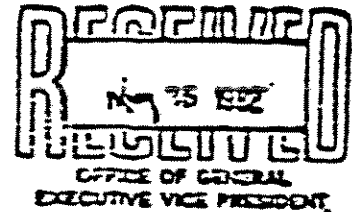
The parties further acknowledge the necessity of an independent review of the facts by management prior to the issuance of disciplinary action, emergency procedures, indefinite suspensions, enforced leave or administrative actions. Inspectors will not make recommendations, provide opinions, or attempt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

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

* * *



CHIEF POSTAL INSPECTOR
Washington, DC 20260



May 24, 1982

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

Dear Mr. Burrus:

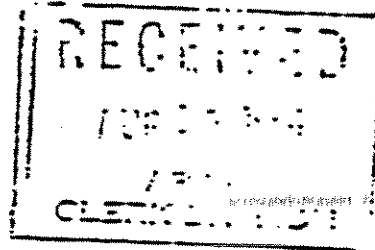
This replies to your May 10, 1982, letter to Senior Assistant Postmaster General Joseph Morris concerning the role of stewards or union representatives in investigatory interviews. Specifically, you expressed concern that the Inspection Service has adopted a policy that union representatives be limited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

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

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

Sincerely,


H. Fletcher



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

AUG 8 1984

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: Young
Charleston, WV 25301
H1C-2M-C 7183

Dear Mr. Connors:

On July 10, 1984, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether the grievant was entitled to have a union steward present during a discussion under Article 16, Section 2, of the National Agreement.

After further review of this matter, we agreed that there was no national interpretive issue fairly presented as to the meaning and intent of Article 16 of the National Agreement. This is a local dispute over the application of Article 16, Section 2, of the 1981 National Agreement as discussions of this type shall be held in private between the employee and the supervisor. However, in cases where a reasonable basis exists for the employee to believe that the discussion will result in disciplinary action, a steward may be present. The parties at the local level should apply the above understanding to the specific fact circumstances in order to resolve this case.


Accordingly, we agreed to remand this case to Step 3 for further consideration by the parties.

Please sign and return the enclosed copy of this decision as acknowledgment of our agreement to remand this grievance.


Mr. James Connors

Time limits were extended by mutual consent.

Sincerely,



Thomas J. Lang
Labor Relations Department



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



UNITED STATES POSTAL SERVICE
475 L'Entant Plaza, SW
Washington, DC 20260
April 24, 1986

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

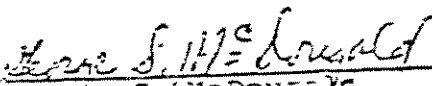
Dear Mr. Burrus:

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


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

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

Sincerely,


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

Enclosure


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

4-24-86
(Date)

Art. 17
Gerald Steward
Revised



RECEIVED

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

JUL 27 1988

APWU
CLERK DIVISION

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

JUL 28 1988

ARTICLE	17
SECTION	
SUBJECT	
INTERVIEW of POSTAL INSPECTION	

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

Dear Mr. Connors:

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

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

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

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

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

Time limits were extended by mutual consent.

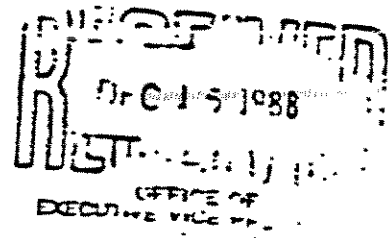
Sincerely,

for *Rodney A. Stew*
Joyce Ong
Labor Relations Department

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



UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100
December 12, 1988



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

Dear Bill:

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

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

Sincerely,


Joseph J. Mahon, Jr.
Assistant Postmaster General

The Role of the Union Steward

Postal employees are subject to investigation by the Postal Inspection Service for off duty as well as on duty offenses. Generally, off duty non postal offenses, subject to investigation includes, but are not limited to:

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

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

During an interrogation by the Inspection Service, it is most important that the union steward or representative recognize his or her role. He or she should not allow the inspectors to limit his or her participation to that of a passive observer. He or she should attempt to clarify the facts, assist the employee in articulating an explanation and advise the employee when to remain silent and to consult with an attorney.

Prior to filing the grievance, the shop steward should request a copy of the investigative memorandum, affidavits, all exhibits and materials relied upon to issue the proposed suspension or discharge. He or she should view all video tapes, listen to all audio tapes and question all witnesses, including confidential informers, managers, supervisors, postmasters, officers in charge and postal inspectors.

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

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

Article 17.3

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

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

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

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

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



American Postal Workers Union, AFL-CIO

Greater Greensboro Area Local 711, P.O. Box 20591, Greensboro, NC 27420

1/26/92

Doug Holbrook
Secretary-Treasurer
American Postal Workers Union
1300 L Street, N.W.
Washington, D.C. 20005

Dear Brother Holbrook,

I hope this short letter finds you well as we head into the new year.

Could you please advise me on the matter of the Privacy Act obligations of Shop Stewards. If a steward is told something in confidence what are the legal obligations of that steward regarding the matter? Are there any aspects of the National Labor Relations Act that apply to the relationship of the steward to the grievant regarding disclosure of information? What are the ramifications if there are?

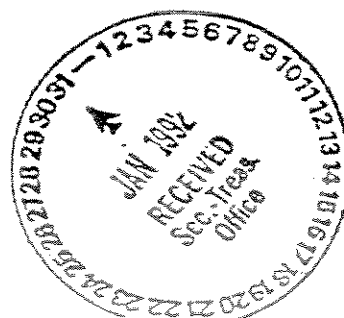
Furthermore, does the Code of Ethical Conduct under the ELM apply the relationship of Shop Steward and grievant?

Your answers to these questions would be most appreciated as well as any other thoughts you have on the above matter.

Fraternally,

A handwritten signature in cursive script, appearing to read "Mark Dimondstein", is written over a horizontal line.

Mark Dimondstein
Local President
Greensboro Area Local





American Postal Workers Union, AFL-CIO

1800 I Street, NW, Washington, DC 20005

Douglas C. Holbrook
Secretary-Treasurer
(202) 842-4215

March 16, 1992

Mark Dimondstein, Local President
Greater Greensboro Area Local
P. O. Box 20591
Greensboro, NC 27420

Dear Brother Dimondstein:

Thank you for your letter dated January 26, 1992 concerning the rights and obligations of stewards. I have asked our General Counsel's Office to give me some guidance in answering your letter, and this letter reflects the guidance they provided.

Stewards often receive confidential information when they are representing individuals either in the grievance procedure or otherwise as part of their responsibilities in enforcing the collective bargaining agreement. Stewards have a qualified privilege not to reveal information they have received in the course of their responsibilities as stewards. If the Postal Service interrogates stewards about what they have learned, such interrogation violates the National Labor Relations Act because it interferes with the performance of their union responsibilities.

The Code of Ethical Conduct under the Employee and Labor Relations Manual applies to Shop Stewards. It does not, however, give the Postal Service a right to interrogate Shop Stewards about what they learn as Shop Stewards. A distinction must be made, however, between information obtained by Shop Stewards acting in their capacity as stewards and information they obtain in other ways not resulting from performance of their union duties. Shop Stewards have no more privilege against cooperation with official investigations than any other employee, unless the Postal Service is seeking to obtain information the steward possesses because of the steward relationship with a member or members of the union.

National Executive Board

Mac Miller
President

William Burns
Executive Vice President

Douglas C. Holbrook
Secretary-Treasurer

Thomas A. Hill
Industrial Relations Director

Ke Wilson
Dir. Int. Division

Thomas K. Freeman, Jr.
Director, Maintenance Division

Donald A. Ross
Director, MVS Division

George N. McKernan
Director, QPM Division

Norman L. Seward
Director, Mail Handling Division

Regional Coordinators

James P. Williams
Central Region

Philip C. Fleming, Jr.
Eastern Region

Elizabeth "Liz" Powell
Northeast Region

Archie Salisbury
Southern Region

Raymond R. Moore
Western Region

Mark Dimondstein
March 16, 1992
Page 2

The Privacy Act does not apply to the Union. This is not to say that there are no privacy considerations in information obtained by the Union or by its stewards. Individuals in our society have a right of privacy and that right should not be invaded without justification. In any revelation of information concerning individuals, the individual's dignity and right of privacy should be respected.

Finally, although your letter did not raise the question, I want you to know that stewards who obtain information concerning criminal conduct in the course of the performance of their duties as stewards are not privileged to refuse to disclose that information in response to a subpoena from a federal or state grand jury. If confronted by legal process issued by or under the auspices of a court, stewards do not have the right to assert the type of professional privilege asserted by doctors or lawyers. Thus, it is possible for stewards to be placed in a difficult circumstance or even compelled to provide testimony against fellow union members if they hear confessions or receive incriminating evidence and are later subpoenaed to testify about what they know or heard.

I hope these comments sufficiently answer your questions.

With best wishes,

Yours In Union Solidarity,

Douglas C. Holbrook
Secretary-Treasurer

DCH:mjm



NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

WASHINGTON, D.C. 20570

REPORT OF THE GENERAL COUNSEL

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

A handwritten signature in cursive script, reading "Frederick L. Feinstein", is positioned above the printed name.

Frederick L. Feinstein
General Counsel

Discipline of Union Steward for Refusing
to Cooperate with Employer Investigation

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

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

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

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

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

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

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

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

DRAFT LETTER TO POSTAL INSPECTOR WHO IS DEMANDING
TESTIMONY FROM STEWARDS

Dear Inspector _____:

I am writing in response to your request that I provide you a formal statement concerning the actions of grievant _____, who is the subject of a removal action by the United States Postal Service. Because the information you are seeking was obtained by me in the course of the performance of my duties as a Union steward, I consulted a National Officer of the American Postal Workers Union, AFL-CIO concerning my responsibilities. I have since been advised by them, and by the National Union's General Counsel's Office, that I may not lawfully be asked to disclose information obtained by me in the course of my performance of my duties as a steward. Under decisions of the National Labor Relations Board, particularly Cook Paint & Varnish Co., 258 NLRB 1230 (1981), stewards may not lawfully be asked by employers to give testimony against individuals based upon information obtained by stewards in the performance of their duties as stewards. Accordingly, I respectfully refuse to provide you the evidence you are seeking against grievant _____.

For your information, I am enclosing with my letter a recent excerpt from the Report of the General Counsel of the National Labor Relations Board. As you will see, pages 9 through 11 of that Report discuss these principles. The case commented upon by the General Counsel is one in which a grievant allegedly uttered threats against the plant manager in the presence of a steward who was assisting the grievant on proposed discipline for other reasons. The General Counsel found it unlawful for the employer to request a statement from the steward about the alleged threats.

On the basis of this information, I hope you will agree that it would be inappropriate for me to provide you a statement in this matter.

Sincerely,

THE WEINGARTEN RIGHTS

Weingarten

The Supreme Court's decision in Weingarten gives employees the right to union representation when a management representative attempts to commence an investigatory interview.

The fundamental distinction between the two categories of rights is that Miranda is primarily an exclusionary rule. Failure to abide by this rule is grounds for excluding evidence in a subsequent criminal proceeding.

Weingarten rights, by contrast, exist without regard to whether there is a subsequent proceeding of any sort.

Further, Miranda vindicates the right of a defendant not to incriminate himself.

Weingarten exists not so much to prevent self-incrimination, but to allow the union to represent the employee in any decision or procedure which might impact on the terms and conditions of employment.

The Weingarten case sets forth the Union's right to represent employees in investigatory interviews. It allows employees the right of pre-interview consultation and the right to make requests of the union representative for clarification or information during the interview. Postal Inspectors interviewing employees are not obligated to bargain or discuss the issues with the union representative. However, if the employee's rights under Weingarten are denied, no information gathered during the interview can be used as the basis of any disciplinary action.

Weingarten rights attach to any interview which the employee reasonably believes may result in disciplinary action. The employee must assert the right for union representation. If he/she is silent the employer is allowed to proceed with the interview without a

union representative present. In the event that no representative is available, under most circumstances, the employer is allowed to proceed with the interview.

Once an employee does make a request for union representation, the employer is permitted one of the three options:

The employer may:

1. Grant the request

2. Discontinue the interview

3. Offer the employee the choice between continuing the interview unaccompanied by a union representative or having no interview at all.

Under no circumstances may the employer continue the interview without granting the employee union representation, unless the employee voluntarily agrees to remain unrepresented after having been presented with the options set forth above.

While an employee may at first refuse to request Weingarten rights, he or she may reassert them at any stage of the interview. Any time the employee asserts Weingarten rights, the employer must present the options set forth above and abide by the employee's choice.

If such request for union representation is granted, the employee must proceed with the interview.

There have been limitations placed on Weingarten rights since the case was decided. An employee's right to union representation does not extend to the representative of his or her choice.

The right relates to investigatory interviews—that is, interviews arranged to elicit facts which may form the basis for discipline. No Weingarten rights attach to a meeting called for that purpose of merely announcing a disciplinary measure that the employer has already decided to take. Weingarten rights may, however, attach to so-called

"counselling" interviews if during the course of such discussion, the employer gathers information which may become the grounds for later discipline.

Members should be aware that mere satisfaction of an employee's Miranda rights does not satisfy Weingarten rights in those instances where information derived from a criminal investigation is used to support disciplinary action.

Significantly, the activities of stewards or union representatives while representing employees in investigative interviews are also protected under the Act against interference or threats of reprisal. No union representative can be disciplined for responding to an employee request under Weingarten.

In reviewing Weingarten and Miranda, it must be understood that they relate to different rights under the law. Both cases vindicate the right to pre-interview consultation. Weingarten, however, relates to possible adverse action concerning employment, discharge, suspension, etc. Miranda pertains to criminal investigations and proceedings.

An employer is only obligated to inform the employee of the Weingarten rights upon request.

The subject of a criminal investigation must be informed of his/her Miranda rights regardless of whether they are asserted, prior to the initiation of an interview with a prospective defendant.

CONSOLIDATION COAL COMPANY, ROBINSON RUN MINE NO. 95 and
UNITED MINE WORKERS OF AMERICA, DISTRICT 31

Case 6-CA-23681

NATIONAL LABOR RELATIONS BOARD

307 N.L.R.B. 976; 1992 NLRB LEXIS 759; 140 L.R.R.M. 1248;
1992-93 NLRB Dec. (CCH) P17,330; 307 NLRB No. 152

June 25, 1992

CORE TERMS: interview, investigatory, discipline, notice, recommended, posted, administrative law, committeemen, readily available, remedial order, desist, cease, National Labor Relations Act, unfair labor practice, labor organization, rights guaranteed, restraining, grievance, modified, defaced, admits, cease-and-desist, credibility, conclusions of law, engaged in commerce, affirmative action, attached notice, times material, entire record, coal

[**1]

DECISION AND ORDER

By James M. Stephens, Chairman; Dennis M. Devaney, Member; Clifford R. Oviatt, Jr., Member

OPINION:

[*976] On January 17, 1992, Administrative Law Judge Martin J. Linsky issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, n1 and conclusions and to adopt the recommended Order as modified. n2

n1 The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products, 91 NLRB 544 (1950)*, enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent defends its conduct by arguing, inter alia, that its general superintendent was merely following the contractual grievance procedure when he refused to allow the District 31 executive board member to serve as Robert Knisely's representative at the investigatory interview held on June 10, 1991. This argument lacks merit. Even assuming that any restrictions that may pertain to the grievance process would have been applicable had a grievance been filed, no grievance involving Knisely was pending at the time of the June interview.

n2 In par. 1(b) of his recommended Order, the judge used the broad cease-and-desist language "in any other manner." However, we have considered this case in light of the standards set forth in *Hickmott Foods, 242 NLRB 1357 (1979)*, and have concluded at this time that the narrow cease-and-desist language "in any like or related manner" is appropriate. We shall modify the judge's recommended Order accordingly. [**2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Consolidation Coal Company, Robinson Run Mine No. 95, Shinnston, West Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

"(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act."

2. Substitute the attached notice for that of the administrative law judge.

ALJ: MARTIN J. LINSKY

ALJ-DECISION:

[*976] DECISION

Statement of the Case

MARTIN J. LINSKY, Administrative Law Judge: On June 12, 1991 and July 24, 1991 United Mine Workers of America, District 31, herein the Union, filed a charge and first amended charge, respectively, against Consolidation Coal Company, herein Respondent.

On July 24, 1991, the National Labor Relations Board, by the Acting Regional Director for Region 6, issued a Complaint, which was later amended, which alleges that Respondent violated Section 8(a)(1) of the National Labor Relations Act, herein the Act, when it denied [*3] the request of its employee Robert Knisely to be represented by United Mine Workers of America, District 31 Board Member Carlo Tarley at an investigatory interview which could have resulted in the discipline of Robert Knisely.

Respondent filed an Answer in which it denies it violated the Act in any way.

[*977] A hearing was held before me in Fairmont, West Virginia, on September 19, 1991. n3

n3 On this same day a hearing was held before me involving the same Respondent and Charging Party, i.e., Consolidation Coal Company, 6-CA-25393. No party to the litigation moved to consolidate the two cases.

I find that Respondent did violate the Act as alleged in the Complaint.

Upon the entire record in this case, to include post-hearing briefs submitted by the General Counsel and Respondent, and upon my observation of the demeanor of the witnesses, I make the following:

Findings of Fact

I. Jurisdiction

Respondent, a Delaware corporation with an office and place of business at the Robinson Run Mine No. 95 near Shinnston, West Virginia, has been engaged in the mining and nonretail sale of coal.

During the 12 month period ending May 31, 1991, Respondent, in the course and conduct of [*4] its business operations, sold and shipped from its West Virginia facilities, products, goods and materials valued in excess of \$50,000 directly to points outside the State of West Virginia.

Respondent admits, and I find, that it is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. The Labor Organization Involved

Respondent admits, and I find, that the United Mine Workers of America, District 31, is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practice

On Wednesday, June 5, 1991, Robert Knisely, a motorman, and Charles Cienowski, his co-worker, both of whom are employees of Respondent and represented by the Union were involved in an incident at work which included a derailment.

On Saturday, June 8, 1991, Robert Knisely was informed that he was to meet at 5pm on June 10, 1991, at the start of his shift, with Thoomas "Pete" Simpson, the general superintendent of Robinson Run Mine No. 95. Knisely was told that the meeting with Simpson could result in his being disciplined and the discipline [**5] might include his discharge.

Knisely called Nelson Starcher, the President of UMW Local 1501. Starcher told Knisely that he (Starcher) would be out of town on June 10, 1991 and had asked Carlo Tarley from District 31 to take care of matters in his absence.

The Union signatory to the collective bargaining agreement under which Knisely worked was the International Union UMW. The International's District 31 helped police collective bargaining agreements within its jurisdiction. District 31 was broken down into two sections. The section under Executive Board Member Carlo Tarley handled Local 1501 UMW, which was Knisely's Local.

On Monday morning Knisely went to District 31's headquarters to see Tarley and told Tarley that he wanted Tarley to represent him at the investigatory interview at 5pm that afternoon. Tarley agreed to represent Knisely.

Later that Monday Knisely appeared at the mine. Also present were two men from District 31, i.e., Carlo Tarley, who Knisely wanted to represent him at the investigatory interview with Thomas "Pete" Simpson, and Gary Jordan. Also present were 3 newly elected members of the mine committee, W. T. Hockenberry, Sam Marra, and Jim Parker. [**6] Hockenberry, Marra, and Parker all work at Robinson Run Mine No. 95 but none had ever represented an employee at an investigatory interview. Carlo Tarley himself had worked at Robinson Run Mine No. 95 for 20 years or until June 1989 when he became an Executive Board Member of District 31. Tarley was officially in a leave of absence status from his job at Robinson Run Mine No. 95.

I credit Knisely that prior to Knisely's interview with Simpson that when Simpson said that Knisely would be allowed only one representative at the interview that Knisely said to Simpson that Tarley would be his representative and Simpson said no.

Tarley testified that Simpson said that Knisely could have only one representative at the investigatory interview and it could not be Tarley and Tarley argued with Simpson that it should be him. Simpson corroborates that Tarley was present for the Knisely interview and was told by Simpson that he (Tarley) could not be present during the interview and that Tarley argued that he had a right to be present.

It is clear in the extreme that Knisely wanted Tarley to represent him at the investigatory interview and Respondent knew it and it is an insult to one's intelligence [**7] and common sense to suggest otherwise.

Simpson made it clear to Knisely, Tarley and the others that Knisely could have only one representative at the investigatory interview and that it could not be Tarley or Jordan but had to be one of the three mine committeemen, none of whom had ever represented an employee at an investigatory interview. Since I find that Knisely told Simpson

that he wanted Tarley to represent him Simpson denied Knisely the representative of his choice. Simpson testified that Knisely did not specifically request Tarley. I don't credit Simpson on this point. But even Simpson admits that Tarley, in Simpson and Knisely's presence, argued that he had a right to be present at the interview. No reasonable person could conclude that Simpson did not know that Knisely wanted Tarley to represent him at the investigatory interview.

Simpson told Knisely that he had to appear at the 5pm investigatory interview and if he wanted representation it had to be one of the three mine committeemen. As noted all three of the mine committeemen were inexperienced in handling investigatory interviews whereas Tarley was highly experienced. Forcing Knisely to choose one of the 3 mine [**8] committeemen and denying his request for Carlo Tarley as his representative was the functional equivalent of forcing a defendant to select as his counsel a young lawyer who had never tried a case before over the late great trial lawyer Edward Bennett Williams when both were present and ready to represent the defendant. It was obvious why Knisely would want Tarley and Tarley was present and ready to represent him. No delay whatsoever would be occasioned by letting Knisely have Tarley as his representative.

Suffice it to say Simpson required that Knisely pick as his representative one of the three mine committeemen present. [*978] Since he could not have Tarley, Knisely selected W. H. Hockenberry to represent him. Hockenberry represented Knisely at the investigatory interview and he also represented Knisely's co-worker, Charles Cienowski. Neither Knisely nor Cienowski received any discipline. This, of course, is no defense to the allegation that Respondent violated the Act in denying Knisely his choice of representative. Nor, of course, is it any defense to an alleged unlawful denial of choice of representative that the employee, like Knisely, is a college graduate, has himself represented [***9] at least one fellow employee at an investigatory interview, and is a member or former member of the mine committee and safety committee. I note that lawyers, even very talented ones, hire the best lawyers they can get if faced with legal problems.

In *NLRB v. Weingarten*, 420 U.S. 251 (1975), the Supreme Court approved the Board's view that Section 7 of the Act gives an employee the right to demand union representation at investigatory interviews which the employee reasonably believes could result in discipline. Respondent stipulated in the instant case that the investigatory interview that Knisely was to have with Simpson could have resulted in Knisely's being disciplined and possibly even discharged. I find as a matter of fact that Knisely requested Tarley to be his representative and expressed that desire to Respondent. Respondent did not cancel the investigatory interview but went forward with it. Respondent's refusal to let Tarley, who was present, represent Knisely at the investigatory interview was a violation of Section 8(a)(1) of the Act. See, *GHR Energy Corp.*, 294 NLRB No. 72 (June 13, 1989), where a similar violation was found, i.e., it was a violation of [***10] the Act to deny an employee his choice of representative, who in that case was from the International Union and present, and force the employee to proceed with another representative.

In the instant case it would not have been a violation of the Act if Respondent denied Knisely's request for representation by Tarley if Tarley was not present and to grant the request would force a postponement of the investigatory interview. See, *Coca-Cola Bottling Co.*, 227 NLRB 1276 (1977). But in the instant case as in *GHR Energy Corp.*, *supra*, the requested representative was present and ready to go forward. Hence Respondent violated Section 8(a)(1) of the Act.

The General Counsel requests a broad remedial order in this case. The Board in *Hickmott Foods*, 242 NLRB 1357 (1979), held that a broad cease and desist order requiring a Respondent to cease and desist from "in any other manner" restraining or coercing employees in the exercise of their Section 7 rights rather than the narrow "in this or any like manner" language should be reserved for situations where a Respondent is shown to have a proclivity to violate the Act or has engaged in such egregious or widespread misconduct [***11] as to demonstrate a general disregard for the employees' fundamental statutory rights.

The General Counsel has referred me to enough Board cases of unfair labor practices being committed by this Respondent that I will grant the application for a broad remedial order. Subsequent to the hearing in this case the Board issued yet another decision finding the Respondent guilty of an unfair labor practice. See, *Consolidation Coal Company*, 305 NLRB No. 59 (November 7, 1991). On December 17, 1991 I issued my decision in *Consolidation Coal*, JD-335-91, wherein I found Respondent again violated the Act. I will recommend a broad remedial order even though


evidence at the hearing reflects that Respondent is the second largest producer of coal in the United States, operates some 25 unionized mines in 7 states, and employs some 10,500 people.

n4 See the following Board cases where Respondent was found to have violated the Act: 253 NLRB 789 (1980); 256 NLRB 541 (1981); 260 NLRB 466 (1982); 263 NLRB 1306 (1982); and 266 NLRB 670 (1983).

Conclusions of Law

1. Respondent is an Employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), [**12] (6) and (7) of the Act.

2. District 31, United Mine Workers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act when it denied the request of its employee Robert Knisely to be represented by United Mine Workers of America, District 31 Board Member Carlo Tarley at an investigatory interview which could have resulted in the discipline of Robert Knisely. 

The Remedy

Having found that Respondent has engaged in this unfair labor practice it is recommended that the Respondent be ordered to cease and desist therefrom and to take the affirmative action described below which is designed to effectuate the policies of the Act.


Upon the foregoing findings of fact and conclusions of law, upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER n5

n5 If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Respondent, Consolidation [**13] Coal Company, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Denying the requests of its employees for representation by District 31 Board Members at investigatory interview which could result in their discipline if the District 31 Board Member requested is readily available to provide such representation. 

(b) In any other manner, interfering with, restraining or coercing their employees in the exercise of the rights guaranteed to them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Grant the request of its employees for representation by District 31 Board Members if readily available at investigatory interviews that could result in employee discipline.

(b) Post at its Shinnston, West Virginia, facility copies of the attached notice marked "Appendix." n6 Copies of the notice, [**979] on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are [**14] customarily

posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

n6 If this Order is enforced by a judgement of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(c) Notify the Regional Director for Region 6 in writing within 20 days from the date of this Order what steps the Respondent has taken to comply therewith.

January 17, 1992

[*976contd]


[EDITOR'S NOTE: THE PAGE NUMBERS OF THIS DOCUMENT MAY APPEAR TO BE OUT OF SEQUENCE; HOWEVER, THIS PAGINATION ACCURATELY REFLECTS THE PAGINATION OF THE ORIGINAL PUBLISHED DOCUMENTS.]

APPENDIX
NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT deny the request of our employees for representation by District 31 board members at investigatory interviews which could result in their discipline if the District 31 board member requested is readily available to provide such representation.

WE WILL NOT in [*15] any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed to them in Section 7 of the National Labor Relations Act.

WE WILL grant the request of our employees for representation by District 31 board members if readily available at  investigatory interviews that could result in employee discipline.

CONSOLIDATION COAL COMPANY

(Employer)

Dated By

(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 1000 Liberty Avenue, Room 1501, Pittsburgh, Pennsylvania 15222-4173, Telephone 412-644-2969.

THE MIRANDA RIGHTS

Miranda

The Miranda decision grew out of a criminal case where the following question was decided:

Can a law enforcement officer interview a citizen and use the result of the interview against him in a criminal prosecution without providing the person with

- (a) The opportunity to remain silent
- (b) The opportunity to consult with counsel and
- (c) Informing him of the rights of a and b

These rights are articulated in the following statement, which must be given to any subject of a criminal investigation:

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

Failure to give the above warning, and rights set forth in the warning, renders inadmissible any information gathered through or as the result of such interview. The evidence is considered "tainted."

The Postal Inspection Service is a criminal investigatory unit and employees subjected to criminal investigations conducted by Postal Inspectors are entitled to Miranda rights, if the employee interviewed is to be prosecuted.

However, there are questions as to whether failure by the Inspection Service to give Miranda warning is grounds for excluding evidence in a non-

criminal proceeding, such as an arbitration or Labor Board hearing. The Labor Board and most arbitrators have sidestepped the issue.

The rationale of the Miranda decision, according to the Supreme Court, is that "a lone individual is subjected to unfair pressures when he is compelled, without being given the right to informed assistance, to submit to an interview about alleged shortcomings with trained interrogators empowered to cause him to suffer adverse consequences." Accordingly, Miranda rights exists only after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way or where special circumstances exist which render the law enforcement official's behavior such as to overbear the person's will to resist and bring about a confession not freely self-determined. Stewards consulted by employees under investigation for suspected criminal activity should advise such employees to invoke their right to remain silent until they have received advice from legal counsel.

Notably, under Miranda, an individual being interrogated by the Postal Inspection Service or other law enforcement agents may terminate their participation in the interview at any time, even when the interview is attended by the counsel when he/she requested.

Miranda rights do not extend to inquiries conducted by supervisors in regard to unacceptable behavior, attendance, deficiencies or job performance or other actions which are not grounds for criminal penalties.

UNITED STATES POSTAL INSPECTION SERVICE
WARNING AND WAIVER OF RIGHTS

Place: Whitelandville Pa

Date: Sept 8, 1981 Time: 1 PM

WARNING

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

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

(Date) (Time)

WAIVER

(Signature)

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

(Signature)

(Time)

(Date)

Witnessed by: [Signature]

Title: Postal Inspector

Witnessed by: [Signature]

Title: Postal Inspector

Understands his rights but refuses to sign any portion of the form

Confidential Field Manual

IV-400 Exhibit A (Investigative
Memorandums)

(For transmittal of complete Investigative Memorandums in cases in which the Postmaster or other administrative official is requested to inform you of the action taken.) (See IV-4-8.12 and 8.14)

OUR REF:

DATE:

SUBJECT: (Name of employee, title, and place of employment)

TO: Mr. (Postmaster, Installation Head or District Manager/Postmaster)
(Address)

Herewith is an Investigative Memorandum (and exhibits) relating to the conduct of (Subject). The information is submitted for your consideration and decision as to whether disciplinary action is warranted.

Please advise me, in writing, of your decision in this matter. If you decide to initiate disciplinary action please furnish me a copy of the letter to the employee and your final decision letter. Additionally, if your original decision is subsequently modified in any way as the result of a grievance, appeal or arbitration proceeding, please advise me of the final results of the action taken.

Postal Inspector

Enclosure: Investigative Memorandum

April 1977

Rights Before Postal Inspectors

If questioned by a U.S. Postal Inspector, even if you believe you are not guilty of any wrong doing, it is suggested that you:

- Remain calm;
- Correctly identify yourself;
- Do not physically resist an arrest or a search of your person or property;
- Read aloud to the Postal Inspector(s) the statement on the reverse side of this card;
- Remain silent until you have consulted with your APWU representative or attorney, as appropriate.

This is not complete legal advice. Always consult with a lawyer.



Statement

I request the presence of my APWU representative. If I am a suspect in a criminal matter, please so advise me. If so, I wish to contact my attorney.

His/Her name is _____

Telephone number _____

If I am under arrest, I request you to so advise me and to inform me of the reason or reasons.

I do not consent to a search of my person or property. If you have a search warrant, I request to see it at this time.

I do not waive any of my rights, including my right to remain silent. I will not sign a waiver-of-rights form, nor admit or deny any allegation, nor make any written or oral statement unless my attorney is personally present and so advises me.



Important Questions and Answers

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

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

2. Are postal inspectors required to advise employees that they are entitled to have a union steward or representative present during an interrogation?

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

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

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

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

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

The PS Form 1067 is the United States Postal Inspection Service Warning and Waiver of Rights. It is commonly referred to as the Miranda warning. The employee is asked to sign a waiver of their rights prior to being questioned by the postal inspectors. Under no circumstances should an employee sign this form until they have engaged legal counsel.

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

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

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

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

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

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

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

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

Although the union steward or representative has every right to take an active part on behalf of the employee being interviewed, he or she should not become argumentative or engage in legal discussions with the inspection service. If the situation becomes entangled in interpretations of law or in legal opinions, the best advice to give the employee is to seek legal counsel.

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

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

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

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

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

11. Are postal inspectors authorized to issue letters of charges or recommend disciplinary action against an employee?

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

12. Is an employee required to make a written statement when requested by the Postal Inspection Service?

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

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

A Synopsis of Arbitration Awards on Inspector's Investigative Memorandums

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

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

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

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

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

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

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

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

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

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

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

It is clear from these decisions that an investigation of a possible violation of Postal laws and regulations by the Inspection Service is not in any way an acceptable substitute for the immediate supervisor's own inquiry into the equities of the case. To a Postal Inspector, an employee with thirty years service and a dozen superior performance awards who steals a .22 cents stamp is simply a thief who has misappropriated Postal property. It is entirely proper for the Inspector to look at it this way.

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

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

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

The steward should always follow these rules:

- Rule 1: Be well prepared
- Rule 2: Keep a cool head
- Rule 3: Confer with the grievant
- Rule 4: Request assistance if needed
- Rule 5: Refuse to be intimidated by the Postal Inspector Service

In closing, remember that the burden of proof falls upon management to support all charges. If the steward follows the guidelines outlined in this book, the Union will have met its obligations under the duty of fair representation.